

***United States Court of Appeals
for the
District of Columbia Circuit***



**TRANSCRIPT OF
RECORD**

032

APPELLANTS' APPENDIX

IN THE
UNITED STATES COURT OF APPEALS
FOR THE DISTRICT OF COLUMBIA CIRCUIT

No. 21,167
CARL C. SMUCK
a Member of the Board of Education
of the District of Columbia,
Appellant

v.

JULIUS W. HOBSON, *et al.*,
Appellees

No. 21,168
CARL F. HANSEN,
Superintendent of Schools of the
District of Columbia,
Appellant,

v.

JULIUS W. HOBSON, *et al.*,
Appellees

APPEALS FROM THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

United States Court of Appeals
for the District of Columbia Circuit

FILED JUN 11 1968 VOLUME I

Nathan J. F. Andrews
CLERK

(i)

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[Filed January 13, 1966]

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

JULIUS W. HOBSON, individually and on behalf of JEAN MARIE HOBSON and JULIUS W. HOBSON, JR.; all residing at 4801 Queens Chapel Terrace, N.E. D.C.; SAMUEL D. GRAHAM, individually and on behalf of BARBARA JEANE GRAHAM and KAREN CHANDELLE GRAHAM; all residing at 1827 Massachusetts Ave., S.E. D.C.; MARY ALICE BROWN, individually and on behalf of CHARLES HUDSON BROWN; both residing at 2412 20th St. D.C.; PAUL-INE SMITH, individually and on behalf of MAURICE HOOD; both residing at 1017 4th St. S.E. D.C.; WILLIE DAVIS, JR., individually and on behalf of RONALD D. DAVIS, REGINALD D. DAVIS and MYOSHI J. DAVIS; all residing at 3931 14th St. N.W. D.C.; JAMES K. WARD, individually and on behalf of CHRYCYNTHIA ELAIN WARD; both residing at 1100 Tenton Pl. S.E. D.C.; JOYCE M. MAKEL, individually and on behalf of MICHELLE I. MAKEL; and CAROLYN HILL STEWART, residing at 1303 Congress St. S.E. D.C.

Plaintiffs,

- against -

CIVIL ACTION
No. 82-66

CARL F. HANSEN, Superintendent of Schools of the District of Columbia; THE BOARD OF EDUCATION OF THE DISTRICT OF COLUMBIA; WESLEY S. WILLIAMS, President of the Board of Education of the District of Columbia; CARL SMUCK, EVERETT A. HEWLETT, WEST A. HAMILTON, LOUISE S. STEELE, EUPHEMIA L. HAYNES, GLORIA

K. ROBERTS, PRESTON A. McLENDON, and IRVING B. YOCHELSON, members of the Board of Education of the District of Columbia; CHIEF JUDGE MATTHEW F. MCGUIRE SENIOR JUDGES JOSEPH L. JACKSON, HENRY A. SCHWEINHOUT, CHARLES S. McLAUGHLIN and DAVID A. PINE; and DISTRICT JUDGES ALEXANDER HOLTZOFF, RICHMOND B. KEECH, EDWARD M. CURRAN, BURNITA SHELTON MATTHEWS, LUTHER W. YOUNGDAHL, JOSEPH C. McGARRAGHY, JOHN J. SIRICA, GEORGE L. HART, JR., LEONARD P. WALSH, WILLIAM B. JONES, SPOTTSWOOD W. ROBINSON, III, HOWARD S. CORCORAN, OLIVER GASCH, WILLIAM B. BRYANT, all of the United States District Court for the District of Columbia; THE BOARD OF ELECTIONS OF THE DISTRICT OF COLUMBIA; CHARLES H. MAYER, (Chairman), ERNEST SCHEIN and DR. ROBERT EARL MARTIN, members of the Board of Elections of the District of Columbia,

Defendants.

COMPLAINT FOR DECLARATORY JUDGMENT AND INJUNCTION

[Filed January 13, 1966]

COMPLAINT

The plaintiffs, for their verified complaint, allege:

Parties

1. Plaintiffs:

(a) The infant plaintiffs, JULIUS W. HOBSON, JR., (McKinley High School); BARBARA JEANE GRAHAM, (Eastern High School); KAREN CHANDELLE GRAHAM, (Hines Jr. High School); CHARLES HUDSON BROWN (Langdon Elementary School); MARUICE HOOD,

(Randall Jr. High School); RONALD D. DAVIS, (Crosby Noyes Elementary School); REGINALD D. DAVIS, (Crosby Noyes Elementary School); MYOSHI J. DAVIS, (Crosby Noyes Elementary School); CHRY-CYNTHIA ELAIN WARD, (Congress Heights Elementary School), and MICHELLE I. MAKEL, (Crosby Noyes Elementary School) are among those generally classified as Negroes; are citizens of the United States and of the District of Columbia. They are within the statutory age limits of eligibility to attend the public schools of the District of Columbia. They satisfy all of the requirements for admission to such schools, and are, in fact, attending public schools under the supervision, operation and control of the defendant. These plaintiffs comprise two general categories, viz., those who are eligible to attend and are attending public elementary schools and those who are eligible to attend and are attending public secondary schools in the District of Columbia, both types of schools being under the direct supervision, operation and control of the defendants. Some plaintiffs have been placed and are presently placed in the "basic" and "general" tracks of the so-called "track system" presently in operation in the public schools of the District of Columbia, as more fully explained in the paragraph of this complaint numbered and designated "13".

(b) Adult plaintiffs, JULIUS W. HOBSON, SAMUEL D. GRAHAM, MARY ALICE BROWN, PAULINE SMITH, WILLIE DAVIS, JR., JAMES K. WARD and JOYCE M. MAKEL are among those classified as Negroes; are citizens of the United States and of the District of Columbia and are residents of and domiciled in the District of Columbia. They are taxpayers of the District of Columbia and of the United States. They are guardians and parents of the infant plaintiffs referred to in the paragraph above and designated in the caption of this action, and are required by the laws of the District of Columbia to send the children under their charge and control to public or private schools. In addition, plaintiff JULIUS W. HOBSON has been compelled, for some or all of the reasons hereinafter set

forth, to remove his infant daughter, JEAN MARIE HOBSON, from the Amidon Elementary School, a public school under the supervision and control of the defendants, and enroll her, at great cost and inconvenience, in a private school.

(c) Plaintiff CAROLYN HILL STEWART is among those classified as Negroes; is a citizen of the United States and of the District of Columbia and is a resident of and domiciled in the District of Columbia. She is a permanent teacher in the public school system of the District of Columbia and is required by the terms of her employment to obey, adhere and conform to defendants' rules, regulations, policies, directives, customs, practices and usages.

2. Plaintiffs bring this action in their own behalf and in behalf of all other Negro children attending the public schools in the District of Columbia, their parents and guardians, and teachers employed by the defendants similarly situated and affected with reference to the matters here involved. They are so numerous as to make it impracticable to bring them all before the Court. There being common questions of law and fact, a common relief being sought, as will hereinafter more fully appear, plaintiffs present this action as a class action pursuant to Rule 23(a) of the Federal Rules of Civil Procedure.

3. Defendants:

(a) Defendant BOARD OF EDUCATION exists pursuant to the laws of the United States governing the District of Columbia. (Code of the District of Columbia, §31-101 Defendant WESLEY S. WILLIAMS, (Negro) is President of the said BOARD OF EDUCATION; defendants CARL SMUCK (white), EVERETT A. HEWLETT (Negro), WEST A. HAMILTON (Negro) LOUISE S. STEELE (white), EUPHEMIA L. HAYNES (Negro), GLORIA K. ROBERTS (white), PRESTON A. McLENDON (white), and IRVING B. YOCHELSON (white), are members of the said BOARD OF EDUCATION and all are being sued in their official capacities.

(b) Defendant, CARL F. HANSEN, is the Superintendent of Schools of the District of Columbia (hereinafter referred to as the Superintendent of Schools). He is the executive officer of the Board of Education, charged with the responsibility of maintaining, managing and governing the public schools in the aforesaid District, in accordance with the rules, regulations, policies, directives, customs, practices and usages established by defendant BOARD OF EDUCATION. He is being sued in his official capacity.

(c) The defendant, HON. MATTHEW F. McGUIRE, is the Chief Judge of the United States District Court for the District of Columbia; the defendants HONS. JOSEPH L. JACKSON, HENRY A. SCHWEINHOUT, CHARLES S. McLAUGHLIN and DAVID A. PINE, are Senior Judges of the United States District Court for the District of Columbia; defendants, the HONS. ALEXANDER HOLTZOFF, RICHMOND B. KEECH, EDWARD M. CURRAN, BURNITA SHELTON MATTHEWS, LUTHER W. YOUNGDAHL, JOSEPH C. McGARRAGHY, JOHN J. SIRICA, GEORGE L. HART, JR., LEONARD P. WALSH, WILLIAM B. JONES, SPOTTSWOOD W. ROBINSON, III, HOWARD S. CORCORAN, OLIVER GASCH, and WILLIAM B. BRYANT are District Judges of the United States District Court for the District of Columbia. All are being sued in their official capacities.

(Any reference to defendants hereinafter contained in this complaint shall not pertain to any of the United States District Court Judges heretofore mentioned unless they are specifically mentioned by name or designation.)

(d) Defendants, CHARLES H. MAYER, (Chairman), ERNEST SCHEIN and DR. ROBERT EARL MARTIN, are members of the Board of Elections of the District of Columbia and are sued in their official capacities. Said Board of Elections has the responsibility for scheduling, holding and/or conducting all elections within the District of Columbia. (Any reference to defendants hereinafter contained in this complaint

shall not pertain to any of the members of the Board of Elections of the District of Columbia heretofore mentioned unless they are specifically mentioned by name or designation.)

JURISDICTION

4. (a) The jurisdiction of this Court is invoked under Title 28 U.S.C., §1331. This action arises under the Fifth Amendment to the Constitution of the United States, and Article II, §2, Clause 2 of the Constitution of the United States. The matter in controversy exceeds, exclusive of interest and costs, the sum or value of Ten Thousand (\$10,000.00) Dollars.

(b) The jurisdiction of this Court is also invoked under Title 28 U.S.C. §1343. This action is authorized by Title 42 U.S.C. §§1981 et seq., §§2000(c) et seq., and §§2000(d) et seq.; and the Elementary and Secondary Education Act of 1965.

(c) The jurisdiction of this Court is further invoked under Title 28 U.S.C. §2281. This is an action for a permanent injunction restraining, inter alia, the enforcement, operation and execution of §31-101 of the District of Columbia Code and of the rules, regulations, policies, directives, customs, practices and usages of the Board of Education of the District of Columbia as more fully set forth below.

5. This is a proceeding for declaratory judgment under Title 28 U.S.C., §§2201 for the purpose of determining questions of actual controversies between the parties, to wit:

(a) The question of whether §31-101 of the District of Columbia Code which directs the District Judges of the United States District Court for the District of Columbia to appoint the members of the Board of Education of the District of Columbia (hereinafter referred to as the Board of Education) violates Article II, §2, Clause 2 of the Constitution of the United States in that it purports to and does in fact delegate unconstitutional powers to the District Judges of the United States District Court for the District of Columbia.

(b) The question of whether the rules, regulations, policies, directives, customs, practices and usages of the defendants and each of them, in denying, on account of race and color, the infant plaintiffs and other Negro children of public school age residing in the District of Columbia, educational opportunities, advantages and facilities in the public elementary and secondary schools of said District, including those hereinabove specified, equal to the educational opportunities, advantages and facilities afforded and available to white children of public school age similarly situated in the District of Columbia, are unconstitutional and void, as depriving said plaintiffs of due process, and the equal protection of the law in contravention of the Fifth Amendment to the Constitution of the United States.

(c) The question of whether the rules, regulations, policies, directives, customs, practices and usages of the defendants, and each of them in denying an account of race and color the adult plaintiffs, with the exception of plaintiff CAROLYN HILL STEWART, and other parents and guardians of Negro children of public school age similarly situated residing in the District of Columbia, rights and privileges of sending their children to public schools in said District with educational opportunities, advantages and facilities, including those hereinafter specified, equal to the educational opportunities, advantages and facilities afforded and available to white children of public school age in the District of Columbia, are unconstitutional and void as depriving said plaintiffs of due process and the equal protection of the law in contravention of the Fifth Amendment to the Constitution of the United States.

(d) The question of whether the enforced participation of plaintiff CAROLYN HILL STEWART and other Negro teachers employed by the Board of Education of the District of Columbia in the implementation of rules, regulations, policies, directives, customs, practices and usages of defendants and each of them,

which deny, on account of race and color, to the infant plaintiffs and other Negro children residing in said District educational opportunities, advantages and facilities in the public elementary and secondary schools of said District, including those hereinabove specified, equal to the educational opportunities, advantages and facilities afforded and available to white children of public school age similarly situated, deprives said plaintiffs of due process and the equal protection of the law, in contravention of the Fifth Amendment to the Constitution of the United States.

(e) The question of whether the rules, regulations, policies, directives, customs, practices and usages of the defendants and each of them in intentionally denying, on account of race and color, the infant plaintiffs and other Negro children of public school age residing in the District of Columbia educational opportunities, advantages and facilities in the public elementary and secondary schools of said District, including those hereinabove specified, equal to the educational opportunities, advantages and facilities afforded and available to white children of public school age similarly situated in adjoining, adjacent and contiguous areas of Maryland and Virginia re unconstitutional and void as depriving said plaintiffs of due process and the equal protection of the law, in contravention of the Fifth Amendment to the Constitution of the United States.

(f) The question of whether the rules, regulations, policies, directives, customs, practices and usages of the defendants and each of them in intentionally denying, on account of race and color, the adult plaintiffs, with the exception of CAROLYN HILL STEWART, and other parents and guardians of Negro children of public school age similarly situated residing in the District of Columbia, rights and privileges of sending their children to public schools in their District with educational opportunities, advantages and facilities, including those hereinafter specified, equal to the educational opportunities, advantages and facilities offered and available to white children of public school age in adjoining, adjacent and contiguous areas of

Maryland and Virginia, are unconstitutional and void as depriving said plaintiffs of due process and the equal protection of the law in contravention of the Fifth Amendment to the Constitution of the United States.

CAUSES OF ACTION

First Cause of Action:

6. Pursant to §31-101 of the District of Columbia Code, the District Judges of the United States District Court for the District of Columbia are directed and empowered to nominate and appoint nine (9) members of the defendant BOARD OF EDUCATION, as follows: three members thereof to be nominated and appointed per annum for terms of three (3) years.

7. Said defendant BOARD OF EDUCATION consists exclusively of non-judicial officers with solely executive responsibilities wholly unrelated to the functions and responsibilities of the United States District Court for the District of Columbia.

8. The vesting of the power of nomination and appointment of non-judicial officers with executive responsibilities wholly unrelated to the functions and responsibilities of the United States District Court for the District of Columbia is prohibited by Article 11, §2, Clause 2 of the Constitution of the United States.

9. Said defendant BOARD and the members thereof have, therefore, been unconstitutionally nominated and appointed and are now unconstitutionally functioning and operating as the Board of Education of the District of Columbia.

10. Defendant HANSEN having been nominated and appointed by defendant BOARD OF EDUCATION and the members thereof has been and is now unconstitutionally functioning and operating as the Superintendent of Schools.

Second Cause of Action:

11. The establishment, maintenance and administration of public schools in the District of Columbia are vested in the Board and the Superintendent of Education of the District of Columbia.

12. The public schools of the District of Columbia and under the direct control and supervision of defendants who are under a duty to maintain an efficient system of public schools in said District, wholly consistent with the requirements of the Constitution of the United States. Said District has a public school population that is almost ninety percent Negro and ten percent white, and a total population that is sixty-one percent Negro and thirty-nine percent white.

13. The defendants, and each of them, have at all times operated and, unless restrained as a result of this action, will continue to operate the public school system of the District of Columbia in such a manner as to discriminate against the infant plaintiffs solely because of their race and/or color, all in violation of the Fifth Amendment to the Constitution of the United States. Among other things, defendants:

(a) have originated and continue to administer since the decision of the United States Supreme Court in Bolling v. Sharpe, 347 U.S. 497 (1954), in the public schools under their supervision, a rigid system of pupil ability grouping, referred to hereinafter as the "track system". This system consists of at least four (4) tracks — basic, general, regular and honors — and the placement of a public school student in any one thereof is normally decisive during the balance of his or her public school attendance. The intent and/or effect of the application of said "track system" has been the separation, segregation and exclusion of the infant plaintiffs and their classes, as well as the denial thereto of an education equal to that offered all qualified students who are not of Negro descent.

Moreover, the further intent and/or effect of defendants' application of the "track system" is to deprive the infant plaintiffs and their classes of further educational opportunity by the discriminatory utilization of the non-college preparatory "general" and "basic" tracks insofar as Negro pupils are concerned. At the same time, the college preparatory "regular" and "honor" tracks are discriminatorily utilized by the defendants to allow students who are not of Negro descent to qualify for college and to separate them from the bulk of students of Negro descent.

Moreover, the further intent and/or effect of the "track system" is to discourage and prevent the infant plaintiffs and their classes from even completing their secondary education.

(b) have pursued and continue to pursue educational policies and practices based upon race and color that foster and encourage the juvenile delinquency of the infant plaintiffs and their classes.

(c) have provided and continue to provide for those schools under their supervision with predominantly white pupil populations plant, equipment, materials, supplies and curricula discriminatorily superior to those provided for schools with predominantly Negro pupil populations, thereby depriving the infant plaintiffs and their classes, solely because of race and color, the opportunity of attending public schools where they can obtain an education equal to that offered to all qualified students who are not of Negro descent.

(d) have utilized and continue to utilize public revenues under their control to match or equal private funds raised in predominantly white residential areas of the District for the purpose of improving the plant, equipment, materials, supplies and curricula in the public schools of said areas, thereby discriminating against public schools attended by the infant plaintiffs and their classes.

(e) have accepted and continue to accept private funds for use in the improvement of plant, equipment, material, supplies and curricula in designated public schools with predominantly white pupil populations, thereby depriving the infant plaintiffs and their classes, solely because of race and color, the opportunity of attending public schools where they can obtain an education equal to that offered to all qualified students who are not of Negro descent.

(f) have stationed and continue to station police and other law enforcement officials conspicuously in and about schools attended by the infant plaintiffs and their classes, thereby causing the intimidation and degradation of said Negro students solely because of their race and color.

(g) have dismissed from and/or refused to appoint and continue to dismiss and/or refuse to appoint to high administrative and policy making positions in the District school system qualified Negroes solely on account of their race and color.

(h) have failed, neglected and refused and continue to fail, neglect and refuse to promote plaintiff CAROLYN HILL STEWART and other Negro teachers similarly situated to positions for which they are highly qualified, solely because of their race and color.

(i) have failed to utilize and continue to fail to utilize funds provided by the Elementary and Secondary Education Act of 1965 to further the education of those infant plaintiffs and their classes who are members of families earning Three Thousand (\$3000.00) Dollars or less per annum, and have, instead, discriminated and continue to discriminate in the distribution of said funds in favor of those schools under their supervision with predominantly white pupil populations.

(j) have allocated and assigned and continue to allocate and assign less experienced and/or "temporary" teachers to those schools attended by the infant

plaintiffs and their classes, while at the same time they have allocated and assigned and continue to allocate and assign more experienced and "permanent" teachers to those schools with predominantly white pupil populations.

(k) have drawn and continue to draw the geographical lines or limits of the various sections of the District of Columbia under their jurisdiction so as to separate, segregate and exclude the infant plaintiffs and their classes from those schools with heretofore predominantly white school populations so as to maintain the racial composition thereof.

(l) have ignored and violated and continue to ignore and violate the mandate of the Supreme Court of the United States in Bolling v. Sharpe, *supra*, in which the Court held that "racial segregation in the public schools of the District of Columbia is a denial of the due process of law guaranteed by the Fifth Amendment to the Constitution." (at 500)

Third Cause of Action:

14. Defendants have failed, refused and neglected and continue to fail, refuse and neglect to demand adequate funds from the agencies of the District of Columbia and the Congress of the United States with which to operate the public school system under their control. Such refusal, neglect and failure, together with defendants' improper actions as hereinbefore alleged have directly resulted in the decline of the quality of the plant, equipment, materials, supplies and curricula of the public school system of the District of Columbia, thereby purposely and wilfully creating racial discrimination and segregation in the public schools of the District of Columbia in relation and diametric contrast to those in adjoining, adjacent and contiguous sections of Virginia and Maryland. As a result, the infant plaintiffs and their classes have suffered and are continuing to suffer from said failure, neglect and refusal of defendants to demand adequate funds for the operation of the District school system,

and their other improper actions as hereinbefore alleged, all in violation of the Due Process Clause of the Fifth Amendment to the Constitution of the United States.

Fourth, Fifth and Sixth Causes of Action:

15. All of the allegations hereinbefore set forth based on race and/or color are hereby repeated and realleged based upon economic deprivation and poverty with the same force and effect as if more fully and completely here set forth.

16. Plaintiffs and others similarly situated are suffering irreparable injury and are threatened by irreparable injury in the future by reason of the acts herein complained of. They have no plain, adequate or complete remedy to redress the wrongs and illegal acts herein complained of other than this suit for declaration of rights and an injunction. Any other remedy to which plaintiffs and those similarly situated could be entitled would be attended by such uncertainties and delays as to deny substantial relief, would involve a multiplicity of suits, cause further irreparable injury and occasion damage, vexation and inconvenience not only to the plaintiffs and those similarly situated, but to defendants, as well.

PRAYER FOR RELIEF

WHEREFORE, plaintiffs respectfully pray:

1. The Court, upon filing of this complaint, notify the Chief Judge of this Circuit as required by 28 U.S.C., §2284, so that the Chief Judge may designate two other judges to serve as members of a three-judge court as required by Title 28, U.S.C., §2282, to hear and determine this action.

2. The Court enter a judgment or decree declaring that §31-101 of the District of Columbia Code is unconstitutional insofar as it purports to direct or does direct the nomination and appointment of the Members of the Board of Education of the District of Columbia by the District Judges of the United States District Court for the District of Columbia.

3. The Court issue a permanent injunction forever restraining the judicial defendants from executing, enforcing or administering so much of §31-101 of the District of Columbia Code as empowers them to nominate and appoint members of the defendant Board of Education.

4. The Court enter a judgment and decree declaring that the defendant members of the Board of Education and the defendant Superintendent of Schools purporting to hold office in the District of Columbia have been illegally nominated and appointed thereto and declaring vacant each of said offices and nominating and appointing interim trustees or receivers to administer the District school system until certification of the results of at-large elections as hereinafter set forth, and subject to such directives as this Court may issue.

5. The Court enter a judgment or decree ordering and directing the Board of Elections of the District of Columbia promptly to schedule, hold and conduct at-large elections for the nine vacant positions of members of the Board of Education with the duration and sequence of their said terms in conformity with the present duration and sequence thereof.

6. The Court issue a permanent injunction forever restraining and enjoining the defendants Board of Education and Superintendent of Schools and each of them from:

(a) any further utilization of the "track system" or any other ability grouping or other test or device that is intended to or does in fact discriminate on the basis of race and color as between the pupils under the control and supervision of defendants;

(b) any further utilization of plant, equipment, materials, supplies and curricula that is intended to or does in fact discriminate on the basis of race and color as between the pupils under the control and supervision of defendants;

(c) any delineation or demarcation of school zone lines that is intended to or does in fact discriminate on the basis of race and color as between the pupils under the control and supervision of defendants;

(d) Any further matching or equaling of public revenues under the control and supervision of defendants with private funds that is intended to or does in fact discriminate on the basis of race and color as between the pupils under the control and supervision of defendants;

(e) any further acceptance of private funds that is intended to or does in fact discriminate on the basis of race and color as between the pupils under the control and supervision of defendants;

(f) any further stationing of law enforcement officers in or about any school under the control and supervision of defendants that is intended to or does in fact discriminate on the basis of race and color as between the pupils under the control and supervision of defendants;

(g) any further utilization of funds provided by the Elementary and Secondary School Act of 1965 that is intended to or does in fact discriminate on the basis of race and color as between the pupils under the control and supervision of defendants;

(h) any further pursuance of educational policies and practices based upon race and color that foster or encourage juvenile delinquency among the infant and their classes.

(i) any further disproportionate assignment of teacher personnel that is intended to or does in fact discriminate on the basis of race and color as between the pupils under the control and supervision of defendants;

(j) any further dismissal of or refusal to appoint qualified Negro citizens to high administrative and/or policy-making positions in the district school system that is intended to or does in fact discriminate on the basis of race and color;

(k) any further refusal, neglect or failure to promote qualified Negro teachers that is intended to or does in fact discriminate on the basis of race and color;

(l) any further refusal, neglect or failure to demand of the Commissioners of the District of Columbia and the Congress those funds necessary to provide the infant plaintiffs and their classes with the quantity and quality of education equal to that provided to white children in the public schools of adjoining, adjacent and contiguous areas of Maryland and Virginia.

7. Plaintiffs further pray that the Court will allow them their costs herein and such further, other or additional relief as may appear to the Court to be equitable and just.

8. Plaintiffs further pray that the Court retain jurisdiction of this cause after judgment, to render such relief as may become necessary in the future.

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[Jurat]

[Filed February 28, 1966]

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

JULIUS W. HOBSON, et al.,
Plaintiffs,

v.

Civil Action No.
82-66

CARL F. HANSEN,
Superintendent of Schools
of the District of
Columbia, et al.,
Defendants.

ANSWER OF DEFENDANT CARL F. HANSEN,
SUPERINTENDENT OF SCHOOLS OF THE
DISTRICT OF COLUMBIA, WESLEY S. HAM-
ILTON, LOUISE S. STEELE, EUPHEMIA L.
HAYNES, GLORIA K. ROBERTS, PRESTON
A. McLENDON, AND IRVING B. YOCHELSON,
MEMBERS OF THE BOARD OF EDUCATION
OF THE DISTRICT OF COLUMBIA, CHARLES
H. MAYER, ERNEST SCHEIN AND DR. ROB-
ERT EARL MARTIN, MEMBERS OF THE
BOARD OF ELECTIONS OF THE DISTRICT
OF COLUMBIA, TO COMPLAINT FOR DEC-
LARATORY JUDGMENT AND INJUNCTION

First Defense

The complaint fails to state a claim upon which
relief can be granted.

Second Defense

The defendant members of the Board of Educa-
tion of the District of Columbia deny that Section 31-
101, D.C. Code, 1961 ed., is unconstitutional. The
defendants say that they are lawfully and properly
appointed to their positions. The defendants deny that
the complaint presents any substantial constitutional
question and say that there is no basis for convening
a three-judge court in this matter.

Third Defense

The defendants deny that the Board of Elections for the District of Columbia, Section 1-1101, et seq., D.C. Code, 1961 ed., is authorized to conduct an election of members to the Board of Education.

Fourth Defense

These defendants deny that they have violated plaintiffs' constitutional rights as alleged in the complaint.

Fifth Defense

These defendants assert that all questions of general policy relating to the public schools of the District of Columbia are vested in the Board of Education of the District of Columbia, Section 31-3103, D.C. Code, 1961 ed. Absent deprivation of constitutional rights, which these defendants assert does not exist, the court is without jurisdiction.

Sixth Defense

These defendants aver that the plaintiffs have not pursued and exhausted the administrative and statutory procedure provided in the Elementary and Secondary School Act of 1965; the National Defense Education Act of 1958 and other pertinent statutes.

Seventh Defense

These defendants say that this action does not qualify as a class action under the Federal Rules of Civil Procedure.

For the reasons stated in the defenses enumerated above and for other reasons stated herein, these defendants say that the complaint should be dismissed.

Eighth Defense

Parties

I(a) In answer to the allegations contained in paragraph numbered 1(a) of the complaint, these defendants admit the allegations contained in the first,

third and fourth sentences of said paragraph; are without knowledge or information sufficient to form a belief as to the intended meaning of the second sentence and, therefore, are unable to make any response thereto. Concerning the fifth sentence these defendants say there is no longer a course of instruction described as "Basic", that name having been changed to "Special Academic". Further answering the fifth sentence, the defendants say that of the infant plaintiffs, only Maurice Hood is in the Special Academic class.

(b) In answer to the allegations asserted in the third sentence of paragraph numbered 1(b), these defendants say that parents and guardians of children between the ages of 7 and 16 are required to have their children regularly attend a public, private or parochial school, Section 31-201, et seq., D.C. Code, 1961 ed.; deny that plaintiff Julius W. Hobson was compelled by any improper action of these defendants to remove his infant daughter from the Amidon Elementary School as alleged in the fourth sentence of paragraph 1(b); admit the allegations contained in the first sentence thereof and say that they are without knowledge or information sufficient to form a belief as to the other assertions contained in paragraph numbered 1(b) of the complaint.

(c) Concerning paragraph numbered 1(c), these defendants say that Carolyn Hill Stewart is a Speech Correctionist assigned to the Speech Center of the District of Columbia public schools. These defendants admit the remaining allegations contained therein.

2. With reference to paragraph numbered 2, these defendants deny that this action is brought on behalf of all other negro children, parents, guardians or teachers as alleged in that paragraph and deny that this action qualifies as a class action under Rule 23(a) of the Federal Rules of Civil Procedure.

3(a) The defendants admit the allegations contained in paragraph numbered 3(a) of the complaint.

(b) In answer to the allegations contained in paragraph numbered 3(b), these defendants say that Carl F. Hansen, Superintendent of Public Schools of the District of Columbia is responsible for performing the duties assigned him by Congress and the Board of Education.

(c) These defendants admit the allegations asserted in paragraph numbered 3(c) of the complaint.

(d) These defendants say that Charles H. Mayer, Ernest Schein and Dr. Robert Earl Martin, are members of the Board of Elections for the District of Columbia and deny that the Board has the authority to schedule, hold, or conduct all elections within the District of Columbia as asserted in subparagraph (d).

JURISDICTION

4(a) These defendants say that they are not required to respond to the jurisdictional conclusions contained in the complaint. However, if answer be required, the defendants deny that the 5th Amendment to the Constitution, Article 2, §2, Clause 2, is applicable under the facts in this case as alleged in paragraph 4(a).

(b) These defendants say that the factual predicate does not exist which would give the court jurisdiction under Title 28 U.S.C. §1343, Title 42 U.S.C. §1981, et seq., §2000C, et seq., §2000D, et seq., and the Elementary and Secondary Act of 1965 as alleged in paragraph 4(b).

(c) Concerning paragraph 4(c), these defendants deny that the court has jurisdiction under Title 28 U.S.C. 2281 and say that the court should deny the plaintiffs' request for an injunction.

5. Concerning paragraph numbered 5(a) through (f) of the complaint, these defendants deny that there exists questions of actual controversy; deny that the declaratory judgment procedure (28 U.S.C. 2201) gives the court under the facts existing in this case

jurisdiction over the subject matter; deny that Section 31-101 supra, violates Article 2, §2, Clause 2, of the Constitution of the United States; deny that the rules, regulations, policies, directives, customs, practices and usages of the defendants are in violation of the 5th Amendment to the Constitution of the United States.

CAUSES OF ACTION

6. These defendants say that paragraph numbered 6 of the complaint comprises conclusions of law concerning Section 31-101, supra, to which they are not required to respond. If response be required, these defendants say they rely upon the language of the statute.

7. These defendants admit the allegations contained in paragraph numbered 7 of the complaint.

8. These defendants deny the allegations asserted in paragraph numbered 8 of the complaint.

9. These defendants deny the allegations asserted in paragraph numbered 9 of the complaint.

10. These defendants admit that defendant Carl F. Hansen is Superintendent of the Public Schools of the District of Columbia and that he has been appointed to that position by the Board of Education of the District of Columbia. These defendants deny that he is unconstitutionally functioning and operating as the Superintendent of Schools as alleged in paragraph numbered 10.

11. In answer to allegations contained in paragraph numbered 11 of the complaint, these defendants say that defendant Carl F. Hansen's proper title is Superintendent of Schools of the District of Columbia and not Superintendent of Education of the District of Columbia and say that the establishment, maintenance and administration of the public schools of the District of Columbia are divided among the Board of Education and the Superintendent.

12. These defendants admit the allegations contained in paragraph numbered 12 of the complaint.

13. These defendants deny the allegations contained in paragraph numbered 13 of the complaint and deny the allegations contained in subparagraphs numbered (a) through (l).

14. These defendants deny the allegations contained in paragraph numbered 14 of the complaint.

15. These defendants deny the allegations contained in paragraph numbered 15 of the complaint.

16. These defendants deny the allegations contained in paragraph numbered 16 of the complaint.

Further answering the complaint, these defendants deny all allegations not admitted or otherwise answered and deny all allegations of improper or illegal conduct asserted in the complaint.

/s/ Milton D. Korman
Acting Corporation Counsel, D. C.

/s/ John A. Earnest
Assistant Corporation Counsel, D.C.

/s/ William F. Patten
Assistant Corporation Counsel, D.C.

Attorneys for all defendants except
the Judges of the United States District Court for the District of Columbia

District Building
Washington, D.C. 20004

[Certificate of Service]

[Filed March 25, 1966]

OPINION

William M. Kunstler, Washington, D.C., and Arthur Kinoy, New York, New York, for the plaintiffs.

Milton D. Korman, Acting Corporation Counsel for the District of Columbia, and John A. Earnest and William F. Patten, Assistant Corporation Counsel for the District of Columbia, for all defendants except the Judges of the United States District Court for the District of Columbia.

David G. Bress, United States Attorney, and Joseph M. Hannon, Assistant United States Attorney, for the defendant Judges of the United States District Court for the District of Columbia.

WRIGHT, Circuit Judge:*

In these proceedings Negro parents, individually and on behalf of their minor children, charge racial discrimination by the Superintendent of Schools and the Board of Education of the District of Columbia in the administration of public schools in the District. Plaintiffs allege that these defendants are violating not only the due process and equal protection clauses of the Constitution, but are also failing to comply with the decision of the Supreme Court in Bolling v. Sharpe, 347 U.S. 497, 500 (1954), "that racial segregation in the public schools of the District of Columbia is a denial of the due process of law guaranteed by the Fifth Amendment to the Constitution." Plaintiffs allege that these racial discriminations by the defendant school superintendent and school board members not only deprive them of educational opportunities equal to those provided white students in the public schools in Washington, but also "foster and encourage the juvenile delinquency of the infant plaintiffs and their classes."

The racial discrimination is alleged to be effected through the use of a so-called "track system," by gerrymandering school districts, and by utilizing

public revenues to improve public schools with predominantly white pupil populations. The complaint also alleges that Negro school teachers and Negro administrative personnel are discriminated against by the defendant school superintendent and board members in work assignments and promotion.

The complaint charges that school board members and the school superintendent are holding their offices illegally, being appointed by the judges of the United States District Court for the District of Columbia pursuant to Title 31, District of Columbia Code, Section 101, which statute is said to be unconstitutional in that it places executive power and duties in the judicial branch of the government. Plaintiffs ask that a three-judge district court be convened, as required by 28 U.S.C. § 2284, to hear and determine this action and to issue a permanent injunction restraining the judicial defendants from enforcing 31 D.C. Code § 101, and restraining the defendant board members and superintendent of schools from discriminating against Negro children and teachers in the administration of the public schools in the District of Columbia. The question as to the necessity for a three-judge court convened pursuant to 28 U.S.C. § 2284 to hear this case is before this court at this time by reason of plaintiffs' motion for summary judgment and defendants' motion to dismiss.

28 U.S.C. § 2282 provides: "An interlocutory or permanent injunction restraining the enforcement, operation or execution of any Act of Congress for repugnance to the Constitution of the United States shall not be granted by any district court or judge thereof unless the application therefor is heard and determined by a district court of three judges under section 2284 of this title." Since the complaint in this case alleges the unconstitutionality of an Act of Congress and prays for a permanent injunction restraining its enforcement, a literal interpretation of 28 U.S.C. § 2283 would require the convening of a three-judge district court. In interpreting the need

for such a court, however, the Supreme Court, in Bailey v. Patterson, 369 U.S. 31, 33 (1962), has held that such a court is not required "when the claim that a statute is unconstitutional is wholly insubstantial, legally speaking non-existent," nor when "prior decisions make frivolous any claim" that the statute is constitutional. In short, if the claim of constitutionality or unconstitutionality is frivolous, a three-judge district court is not required. three-judge district court is not required.

The parties, at this stage of the proceedings, agree that the question as to the constitutionality of 31 D.C. Code § 101 is "wholly insubstantial" and frivolous and that a three-judge district court is not required. But plaintiffs in their motion for summary judgment argue that the statute is patently unconstitutional, while the defendants in their motion to dismiss argue precisely the reverse.

Plaintiffs predicate their claim of unconstitutionality of the statute on Article II, Section 2, Clause 2 of the Constitution of the United States which reads, in pertinent part: "but the Congress may by Law vest the Appointment of such inferior Officers, as they think proper, in the President alone, in the Courts of Law, or in the Heads of Departments." They point to the language in Ex parte Hennen, 38 U.S. (13 Pet.) 230, 257-258 (1839), upholding under this clause of the Constitution the appointment of clerks of court by courts of law:

"* * * The appointing power here designated, in the latter part of the section was no doubt intended to be exercised by the department of the government to which the officer to be appointed most appropriately belonged. The appointment of clerks of Courts properly belongs to the Courts of law; and that a clerk is one of the inferior officers contemplated by this provision in the Constitution cannot be questioned.
* * *"

Plaintiffs also cite Ex parte Siebold, 100 U.S. (10 Otto) 371 (1879), and Rice v. Ames, 180 U.S. 371 (1901), as supporting their position that this clause limits court appointments to inferior officers whose duties are related to the judicial function. Plaintiffs also rely on O'Donoghue v. United States, 289 U.S. 516 (1933), which, in holding that the courts in the District of Columbia were Article III as well as Article I courts, stated:

"It is important to bear constantly in mind that the District was made up of portions of two of the original states of the Union, and was not taken out of the Union by the cession. Prior thereto its inhabitants were entitled to all the rights, guaranties, and immunities of the Constitution, among which was the right to have their cases arising under the Constitution heard and determined by federal courts created under, and vested with the judicial power conferred by, Art. III. We think it is not reasonable to assume that the cession stripped them of these rights, and that it was intended that at the very seat of the national government the people should be less fortified by the guaranty of an independent judiciary than in other parts of the Union." 289 U.S. at 540.

The defendants also strongly rely on O'Donoghue v. United States, *supra*, and the line of cases which make clear that the judicial functions of the courts in the District of Columbia are not limited in the same way as Article III courts.¹ They point to the language in National Mutual Ins. Co. v. Tidewater Transfer Co., 337 U.S. 582, 591-592 (1949):

¹Federal Radio Commission v. General Electric Co., 281 U.S. 464 (1930); Postum Cereal Co. v. California Fig Nut Co., 272 U.S. 693 (1927); Keller v. Potomac Electric Power Co., 261 U.S. 428 (1923).

"It is too late to hold that judicial functions incidental to Art. I powers of Congress cannot be conferred on courts existing under Art. III, for it has been done with this Court's approval. O'Donoghue v. United States, 389 U.S. 516. In that case it was held that, although District of Columbia courts are Art. III courts, they can also exercise judicial power conferred by Congress pursuant to Art. I. The fact that District of Columbia courts, as local courts, can also be given administrative or legislative functions which other Art. III courts cannot exercise, does but emphasize the fact that, although the latter are limited to the exercise of judicial power, it may constitutionally be received from either Art. III or Art. I, and that congressional power over the District, flowing from Art. I, is plenary in every respect."

Since the District of Columbia courts are local courts, the defendants maintain, the limitations upon the types of functions which can be performed by federal courts sitting within states are inapplicable to them.²

In attempting to show that the issue as to the constitutionality or unconstitutionality of the statute in suit is frivolous, none of the parties has been able to cite a case in which functions similar to the appointing of a school board have been assigned the courts in the District of Columbia by Congress. In all of the cases cited, the duties imposed on the District of Columbia courts have been at least arguably judicial in the broad sense, although not necessarily

²See, e.g., Muskrat v. United States, 219 U.S. 346, 361 (1911); United States v. Ferreira, 54 U.S. (13 Nov.) 40 (1851); Hayburn's Case, 2 U.S. (2 Dall.) 409 (1792). Compare Glidden Company v. Zdanok, 370 U.S. 530, 552 (1962) (opinion of Mr. Justice Harlan).

"judicial" within the meaning of Article III.³ Nor in any of the cases cited has the District court been in the incongruous position of exercising Article III power with respect to citizens praying for protection against alleged unconstitutional discrimination by its own appointees.⁴ Thus none of the cited cases consider the question whether a court in the District of Columbia, or elsewhere, may, without violating due process, be required by Congress to appoint members of a board with duties unrelated to the judicial function when in so doing the court may be called upon, as it is in this case, to sit in judgment, under its Article III power, of the actions of that board with respect to the constitutional rights of citizens.

This court cannot agree with either plaintiffs or defendants that the issue as to the constitutionality of 31 D.C. Code § 101 is frivolous. The plaintiffs' motion for summary judgment and the defendants' motion to dismiss will, therefore, be referred to the three-judge court, the necessity for which this court hereby certifies to the Chief Judge of the United States Court of Appeals for the District of Columbia Circuit pursuant to 28 U.S.C. § 2284.

/s/ J. Skelly Wright
United States Circuit Judge

* Sitting by designation pursuant to 28 U.S.C. § 291(c).

³In Keller v. Potomac Electric Power Co., supra Note 1, the District of Columbia courts were called upon to review and where necessary to revise rates. The Court cited authorities for the proposition that making rates is a legislative act. 261 U.S. at 440-441. Rate revision, however, was apparently considered even at that time a judicial act. See Green, Separation of Governmental Powers, 29 Yale L. J. 369, 382 (1920).

⁴For Discussions of the constitutionality and propriety of legislative and executive assignments of non-

judicial functions to the courts, see generally Cooley, Constitutional Limitations (8th ed. 1927); Hart & Wechsler, Federal Courts and the Federal System 13-14, 102-105 (1953), and authorities cited therein, especially the Report on the Use of Judges in Non-judicial Offices in the Federal Government, submitted to the Senate on July 2, 1947, by the Committee on the Judiciary, Exec. Rep. No. 7, 80th Cong., 1st Sess.; Frankfurter & Landis, Power of Congress Over Procedure in Criminal Contempts in "Inferior" Federal Courts — A Study in Separation of Powers, 37 Harv. L. Rev. 1010, 1020-1022 (1924); Note, Constitutional Power of Courts or Judges to Appoint Officers, 16 L.R.A. 737 (1915). See also the legislative history of 31 D.C. Code § 101, 40 Cong. Rec. 5754-5764 (1960).

The principle of separating governmental powers is not, of course, applied mechanically. "In a word, we are dealing with what Sir Henry Maine, following Madison, calls a 'political doctrine,' and not a technical rule of law. * * * 'The necessities of the case,' 'to stop the wheels of government,' 'practical exposition,' are the variations in the motif of the decisions." Frankfurter & Landis, op. cit. supra, at 1014, 1015-1016 (footnotes omitted).

[Filed March 29, 1966]

DESIGNATION OF JUDGES TO SERVE ON
THREE JUDGE DISTRICT COURT

The Honorable J. Skelly Wright, United States Circuit Judge for the District of Columbia Circuit, sitting by designation as a United States District Judge on the United States District Court for the District of Columbia, having notified me that a complaint has been filed in said court alleging the unconstitutionality of 31 D. C. Code § 101 and asking for an injunction against its enforcement, and

It appearing that only the first cause of action outlined in said complaint requires the convening of a three-judge court pursuant to 28 U.S.C. § 2282,

IT IS ORDERED, pursuant to 28 U.S.C. § 2284, that the Honorable Wilbur K. Miller, Senior United States Circuit Judge, and the Honorable Charles Fahy, United States Circuit Judge, are hereby designated to serve with the Honorable J. Skelly Wright, United States Circuit Judge sitting by designation as United States District Judge, as members of the court to hear and determine the first cause of action outlined in the complaint.

IT IS FURTHER ORDERED that Causes of Action 2 through 6 outlined in the complaint be, and the same are hereby, remanded to the Honorable J. Skelly Wright for further action pursuant to his designation as United States District Judge on the United States District Court for the District of Columbia.

/s/ David L. Bazelon
Chief Judge
United States Court of
Appeals for the District
of Columbia Circuit

[Filed April 18, 1966]

ORDER

IT IS ORDERED that the motion of the judges of the United States District Court for the District of Columbia to dismiss the complaint be, and the same is hereby, granted as to the Second, Third, Fourth, Fifth and Sixth Causes of Action.

The motion to dismiss as to the First Cause of Action is, of course, pending before the three-judge District Court.

IT IS FURTHER ORDERED that the objections of the defendants to this court's order of February 8, 1966, relating to the appointment of an expert by the court be, and the same are hereby overruled. No expert will be appointed, however, unless funds to pay the costs of such an appointment become available.

IT IS FURTHER ORDERED that this case, as to Causes of Action Two, Three, Four, Five and Six, be and the same is hereby, set for trial on Monday, July 11, 1966, at 10:00 A.M.

/s/ J. Skelly Wright
United States Circuit Judge*

* Sitting by designation pursuant to 28 U.S.C. § 291(c).

[Filed May 16, 1966]

MOTION OF ALL DEFENDANTS EXCEPT
THE DEFENDANT JUDGES FOR THE COURT
TO RESCIND ITS ORDER DATED APRIL 18,
1966, AND TO REFRAIN FROM EXERCISING
JURISDICTION IN THIS CASE WHILE SITTING
AS A SINGLE-JUDGE COURT

These defendants move the single-judge court, Judge J. Skelly Wright presiding, to rescind its order of April 18, 1966 which, among other things, schedules for trial on July 11, 1966, Counts Two through Six of the complaint. They further move the Court to refrain from exercising jurisdiction over this case while sitting as a single-judge court.

As grounds, therefor, these defendants say that when this Court referred this case to the Chief Judge of the United States Court of Appeals for the District of Columbia Circuit and requested the convening of a three-judge court if divested itself of jurisdiction. In turn when the Chief Judge convened a three-judge court all jurisdiction over the complaint properly vested in the three-judge tribunal.

/s/ Milton D. Korman
Acting Corporation Counsel, D.C.

/s/ John A. Earnest
Assistant Corporation Counsel, D. C.

/s/ Robert R. Redmon
Assistant Corporation Counsel, D.C.

/s/ Matthew J. Mullaney, Jr.
Assistant Corporation Counsel, D.C.

Attorneys for all defendants except
the Judges of the United States Dis-
trict Court for the District of Colum-
bia.

[Certificate of Service]

[Filed June 1, 1966]

ORDER

Upon consideration of the motion of all defendants, except the defendant judges, addressed to the single-judge court, Judge J. Skelly Wright presiding, to rescind its order of April 18, 1966, and to refrain from exercising jurisdiction of this case while sitting as a single-judge court, the opposition thereto, and the oral arguments of counsel and

It appearing that the order of the Chief Judge of the Circuit of March 29, 1966, designated the three judges therein named as members of the court to hear and determine only the first cause of action in the complaint, it is

ORDERED that the motion is denied.

/s/ J. Skelly Wright
United States Circuit Judge*

* Sitting by designation.

[Filed September 30, 1966]

MEMORANDUM ON THE ADMISSIBILITY
OF CERTAIN DOCUMENTS OFFERED AS
EVIDENCED BY THE PLAINTIFFS

At the direction of the Court, the Defendants submit this memorandum on the admissibility of certain documents offered by the plaintiffs and upon which the Court has reserved ruling. The documents under consideration include the following:

1. The Equality of Educational Opportunity Survey, published by the U.S. Office of Education, and a Summary Report published prior to the full Survey, Plaintiffs' Exhibits A-18 and A-4 respectively.

2. The transcript of the Puncinsky Committee Hearing and the Report of the Committee, parts of which are Plaintiffs' Exhibits B-11 and B-13;

3. The Order of James E. Allen, Commissioner of Education, State of New York, in the Matter of the Appeal of Milton A. Galamison, et al., and the accompanying Petition praying for the Order, Plaintiffs' Exhibit N-8;

4. The Report of a Survey of the Public Schools of the District of Columbia, submitted by George D. Strayer, Plaintiffs' Exhibit A-16;

5. A speech by Harold Howe, II, U.S. Commissioner of Education, appearing at page 15779 et seq., the Congressional Record of July 21, 1966, Plaintiffs' Exhibit A-19;

6. "Guidelines for Testing Minority Group Children," Society for the Psychological Study of Social Issues, Plaintiffs' Exhibit A-20;

7. The "Outline of the CORE-ADA Position on the D.C. Public Schools," Plaintiffs' Exhibit D-2;

8. A "Statement Presented by Dr. Euphemia L. Hayes on 'The Track Program', November 20, 1963," Plaintiffs' Exhibit B-7;

9. Democracy and the District of Columbia Public Schools, by Ellis O. Knox, Plaintiffs' Exhibit K-2.

I.

The Equality of Educational Opportunity Survey is a comprehensive study of the availability of equal educational opportunities to racial minority groups throughout the United States, written by a staff under the supervision of Professor James S. Coleman. The report was prepared under the auspices of the Office of Education of the Department of Health, Education and Welfare pursuant to the dictates of Section 402 of the 1964 Civil Rights Act. Plaintiffs seek to introduce this report into evidence as part of their case in chief as independent evidence of the facts, opinions and theories therein contained. The survey and the summary of that same report are not admissible for four reasons:

1. The Survey is irrelevant, for it says nothing about the subject of this lawsuit, the public school system of the District of Columbia;
2. The Survey is a treatise that is not competent evidence of its contents;
3. To introduce a lengthy volume of technical material and require the opposing party to distinguish the relevant material from the irrelevant is to place an unreasonable burden upon defendant;
4. There is no statute that would allow the Survey to be admitted in evidence for the purpose offered.

1. The Survey is Irrelevant: The entire District of Columbia public school system is the subject of this lawsuit. Only two senior high schools of the D.C. system and their feeder schools were sampled in the District. Data from this sampling was combined with data from schools in Connecticut, Maine, Massachusetts, New Hampshire, Rhode Island, Vermont, Delaware, Maryland, New Jersey, New York, and Pennsylvania to make up a Northwest Region. The Northeast Region was one of eight geographical regions constructed, sampled, and commented upon by the Survey.

The Survey offers as overview of each regions, but the Survey does not and cannot comment upon a particular school system. This fact was made clear to the Court in a colloquy, beginning on page 1289 of the transcript, between the Court and Dr. Alexander Mood, the principal officer of the U.S. Office of Education in charge of the Survey, as follows:

THE COURT: Doctor, where is the raw data? The questionnaires themselves, the answered questionnaires?

THE WITNESS: They are in the hands of the Educational Testing Service in Princeton.

THE COURT: In other words, they are available?

THE WITNESS: Yes, I presume they are.

THE COURT: This agreement under which the schools cooperated if you will, would not preclude making known the schools involved for the purposes of this case provided the Court required that the schools would not be publically divulged, would it?

THE WITNESS: You are asking whether the Court could see the names of the schools, as a confidential matter?

THE COURT: Yes, Court and counsel with the agreement that they would not disclosed.

THE WITNESS: I would have to consult with counsel, but personally, I shouldn't see why not. It is well understood that for various purposes these schools can be identified. Particularly, research purposes.

THE COURT: Now, when a particular school participated was the information received from that particular school through the questionnaires which you have described used to draw conclusions as to that particular school system or was that information merely thrown in the regional pot so to speak so that conclusions could be drawn as to the region?

THE WITNESS: Only in the regional pot, that is, the schools in a particular district would not be representative of that district except as an accident, so it

wouldn't make any sense to combine schools in some small sub-group. You might not have a representative set of schools.

THE COURT: So, there are no findings or conclusions in the report related to a particular school

THE WITNESS: No. (Emphasis added.)

2. The Survey is a Treatise in an Area that Precludes its Admission as Competent Evidence:

The Survey in question is a highly technical study in a field that must be characterized as an inexact or inductive science. It is not a precise mathematical calculation or a well recognized history that recites facts of wide notoriety. It is a study based on samples and surveys chosen and interpreted in a discretionary manner. The general rule is clear:

"When used to prove the truth of their contents scientific writings are clearly hearsay and are rejected as judicial evidence in all but a few jurisdictions." Dolcin Corp. v. FTC, 219 F.2d 742, U.S.C.A. D.C. 1954, cert. den. 348 U.S. 979. The federal courts are unanimous in their adherence to this rule.

The reasons underlying this rule are highly persuasive. As applied to the Office of Education Survey they may be listed:

a. Allowing such writing to be introduced in evidence is an effective deprivation of an opponent's right to cross-examination. United States v. Int. Harvester, 274 U.S. 693, 703 (1927), Union Pacific Ry. Co., et al. v. Yates, 79 F. 584 (1897), United States v. 50-3/4 Dozen Bottles, etc., 54 F. Supp. 759 (1944), Carter Products, Inc., v. FTC, 201 F.2d 446 (1953), Farmers' Union Federated Cooperative Shipping Association v. McChesney, 251 F.2d 441 (1958), Mississippi Power and Light Co. v. Whitescarver, 68 F.2d 928 (1934).

"There is no convincing authority for the view * * * that as affirmative proof treatises may be offered in evidence." If the testimony of an expert is desired by a plaintiff, he can call a witness so that he can be cross-examined in court. U.S. v. 50-3/4 Dozen Bottles, supra.

b. Opinions expressed by the authors of the study offered may be contested and even completely refuted by other writers whose works are not known to either counsel or court. Union Pac. Ry. Co. v. Yates, supra. From the face of a study it is impossible to distinguish between a widely accepted authority and an author whose opinions are lightly regarded or ignored in the professions. The trier of fact cannot, therefore, estimate how much weight should be given the study.

c. The work offered is the work of professional scholars who express their opinion in the language of their discipline. It is filled with technical terms which a layman does not fully understand. In addition, it undoubtedly uses words in a peculiar manner distinct from their received meaning in the general use of the language. To the person not trained in the fields of education and educational psychology such language may be confusing and misleading. 65 ALR 1105, 20 Am. Jr. 815 Evidence § 966.

d. Even the one jurisdiction which allows introduction of scientific treatises requires the offering party to first establish that the work sought to be introduced is a standard authority on the subject, widely recognized by the profession. Franklin v. State, 29 Ala. App. 306, 197 So. 55, cert. den. 240 Ala. 57, 197 So. 58. The report here offered was published only a few weeks ago and is Professor Coleman's first venture into the particular area covered.

To offer such a study as a standard authority is clearly unreasonable.

3. The Offer Places an Unreasonable Burden on the Defendants:

The Survey offered is 737 pages long, was prepared at cost of approximately one million dollars and represents a huge investment of time and energy. "In carrying out the study, attention was paid to six racial and ethnic groups: Negroes, American Indians, Oriental Americans, Puerto Ricans living in continental United States, Mexican Americans, and whites other than Mexican Americans or Puerto Ricans often called 'majority' or simply 'white'." (p. iii of the Survey). Dr. Coleman testified for the plaintiffs. But his testimony consisted only of a description of the general structure of the Survey and some general observations of his own that may or may not be identical with the conclusion of the Survey. To offer the Survey as a single unit under such circumstances is to require defendants to speculate which, if any, parts of the Survey are pertinent to the District of Columbia and to the class represented in the suit before the Court. This is patently unreasonable. It is to require the defendant to engage in a timeconsuming and highly speculative activity at a time when the defendants have already been forced to operate under the pressure of limited time.

4. No Statute Allows the Survey to be Admitted in Evidence:

The survey in question was prepared pursuant to a statutory dictate and printed by the United States Government Printing Office for the Department of Health, Education and Welfare. As such, a printed copy would be sufficient to authenticate the document. 28 U.S.C. §§1733 and 1740; Rule 44, Federal Rules of Civil Procedure. But the objection to this survey is based not on its authenticity but on its relevancy and competency. The applicable statutes "**** merely provide for the method of proof of the records and do not settle their admissibility in a particular case as proving

or tending to prove the truth of the matters stated in them." Vanadium Corporation v. Fidelity and Deposit Co., 159 F.2d 105 (1947). There are numerous examples of documents having been authenticated as public documents but then ruled not admissible to prove the facts recited. United States v. Aluminum Co. of America, 1 F.R.D. 71. In United States v. Int. Harvester, *supra*, the Supreme Court treated a report prepared by the Federal Trade Commission in precisely this way. And in Mississippi Power & Light case, *supra*, a book published by the Department of Commerce was held inadmissible to prove the facts recited in that book.

It is clear from the language of Rule 44 of the Federal Rules of Civil Procedure that an official record or public document may be proven by an official publication "when admissible for any purpose." Clearly, the situation in which a public document is not admissible was contemplated.

The Court has several times referred to "the Public Documents Act" when discussing the admissibility of the survey and several other documents under consideration in this memorandum. The defendants presume this reference is to the Public Documents Act, Public Law 89-487, 80 Stat. 250, 5 U.S.C. 1002. The Act, as amended, will not go into effect until July 4, 1967, and is inapplicable to this lawsuit. Furthermore, when the Act does become effective, it will require that federal administrative agencies make more of their documents available for public inspection. The Act does not treat of the competency of public documents as evidence in a judicial proceeding. In order for a public document to be admissible "*** the facts stated in the document must have been within the personal knowledge and observation of the recording official or his subordinate, and *** reports based on general investigations and upon information gleaned second-hand from random sources must be excluded." Olender v. United States, 210 F.2d 795

(1954); Vanadium Corp. v. Fidelity & Deposit Co.,
supra; Yung Jin Teung v. Dulles, 229 F.2d 244
(1956).

For all of the foregoing reasons to the Survey entitled Equality of Educational Opportunity and the published summary of that survey are inadmissible in this lawsuit.

II.

Plaintiffs have offered into evidence the entire report of a Congressional Subcommittee and the transcript of hearings held by that subcommittee chaired by Representative Pucinsky. Throughout the trial plaintiffs have been allowed, without objection, to introduce into evidence D.C. school tables, statistics, etc., contained in the report on the theory that the report contains reliable reprints of official tabulations. When introduced at the appropriate time it has been possible to identify the issues to which the evidence offered are relevant. But to offer the full documents into evidence is to attempt to accomplish two objectionable purposes:

1. To introduce into evidence parts of the documents that are rank hearsay and which if offered as excerpts from the entire documents would be rejected;
2. To place upon the defendants the burden of speculating which parts of the survey are relevant and to what issues they are relevant. Because of the length of the survey and the shortage of time available for defendants' preparation, this is clearly an unreasonable burden.

While witnesses before a legislative committee testify under oath, such a hearing is not an adversary proceeding for there is no opportunity for cross-examination. 'In general the principle is clearly accepted that testimony taken before a tribunal or officer not empowered to compel or not in the practice employing cross-examination as a part of its procedure is inadmissible; and, conversely, the kind of

tribunal is immaterial and the testimony is admissible if in fact cross-examination was practiced under its procedure: ***" Wigmore (3d ed., 1940), §1373. It was because of the absence of cross-examination that the court refused to allow an official report to be admitted as evidence of the conclusions and opinions contained therein in Franklin v. Skelly Oil Co., 141 F. 2d 568.

The fact that the documents offered are Congressional publications do not make them competent evidence, however easily they may be authenticated. The Public Documents Act, even if it were in effect, would not allow the introduction of incompetent or irrelevant statements merely because they appear in an official publication. (cf. discussion on pages 8 and 9.) Examples exist of courts rejecting such documents as inadmissible to prove the facts they recite after proper authentication. United States v. Aluminum Company of America, 1 F.R.D. 71; Newman v. United States, 43 App. D.C. 53, rev. on other grounds 238 U.S. 537; Wigmore, § 1662.

Besides offering the entire report and proceedings of the Pucinsky subcommittee, plaintiffs have offered Exhibits B-12 and B-13, which are in fact pages 306 through 321 of the hearings. These pages embody the statement that Dr. Elias Blake made to the subcommittee. Dr. Blake has appeared before the Court and has presented in person his opinion on the relevant issues. In addition, his testimony was accompanied by tables and statistics that were admitted into evidence. Under these circumstances, the admission of the written statement into evidence is at best the admission of a prior consistent statement which, as such, is irrelevant. But admission of the written hearsay statement to prove the contents of that statement also places an additional burden on the defendants. It forces defendants to cross-examine the witness as to each paragraph of the written document in order to insure that important statements go uncontested or untested by cross-examination. This

would be a time-consuming procedure both in the sense that extra preparation would be demanded of defendants and in the sense that the Court would have to listen to a great deal of evidence and opinions that are nothing more than a repetition of what has already been presented in Dr. Blake's testimony. Any testimony that plaintiffs want to elicit from Dr. Blake should, therefore, be confined to the doctor's oral presentation.

III.

The order of Commissioner Allen and the moving petition are offered as plaintiffs' Exhibit N-8. The petition itself is rank hearsay and not admissible. The order is a temporary restraining order issued by Commissioner Allen's office on June 24, 1966. The order stays the site selection and awarding of architectural and construction contracts for several proposed schools in East Brooklyn, New York. To date, no final order has been issued on the matter. The Allen order, being temporary, does not go to the merits of the question raised in the petition, that is, the advisability of an educational park for East Brooklyn, nor does the order raise the constitutional questions that are at issue in the instant case. Instead, the order is concerned solely with a choice between competing school facilities. The order is, therefore, irrelevant to this lawsuit and should not be admitted.

The Court has inquired of the possibility of taking judicial notice of the offering. It has been determined that federal courts, under the proper statutory direction, may take judicial notice of the acts of executive heads of federal departments, not of decisions lacking "public notoriety or general public interest. ***" United States v. Lederer, 140 F.2d 136 (7th Cir., 1954). In the instant lawsuit, the Court is not concerned with federal executive acts, nor acts of public notoriety. In addition, for the Court to take notice of the fact that the order was given would be to take notice of an irrelevant fact. The order and the petition, therefore, should not be judicially noticed

for they lack notoriety, are irrelevant, and are not the acts of officials of federal executive departments.

IV.

The Strayer Report is offered as plaintiffs' Exhibit A-16. It is a study of the District public schools conducted in 1949. As a learned treatise or study, the report is not admissible in evidence. (cf. discussion on pages 5 through 7.) In addition, the report is out-of-date and irrelevant. It is 17 years old and it refers to the segregated school system that existed at the time of its publication.

The report was authorized by Congress with specific enabling legislation and appropriation of funds. It was designed for the information and guidance of the Congress in appropriating funds and overseeing the operations of the District school divisions. The report had no compulsive force upon the defendants, and the fact that the recommendations were implemented or rejected can show no more than the fact that Congress, the defendants or their predecessors agreed or disagreed with the recommendations of the report.

For these reasons, the Strayer Report should not be admitted into evidence and the testimony of Dr. Hansen with respect to the report should be stricken.

V.

Plaintiffs' Exhibit A-19 is a speech delivered by Commissioner Howe and later read into the Congressional Record. It is rank hearsay. The speech could not be admitted into evidence if the original copy or a reliable reprint of that original were offered. The fact that one reprint appears in the Congressional Record does not alter the character of the speech as an out of court statement made not subject to oath, not subject to cross-examination, and not admissible under any exception to the hearsay rule. Here, the Congressional Record reprint could not even be properly authenticated since there is no proof that what

was read into the record is, in fact, what Commissioner Howe said. Therefore, plaintiffs' Exhibit A-19 is not admissible to prove the facts, opinions or theories stated therein.

VI.

The document entitled "Guidelines for Testing Minority Group Children" is offered in evidence as plaintiffs' Exhibit A-20. It is a monograph prepared by a Work Group of a division of the American Psychological Association and is a study that expresses the opinion of the work group that prepared it. As a learned study it is clearly not admissible in evidence since it falls within the prohibitions of the hearsay rule and is not subject to any known exception. (cf. discussion on pages 8 and 9.)

VII.

Plaintiffs offer Exhibit D-2, a 23 page document entitled "Outline of the CORE - ADA Position on the D.C. Public Schools". Here the plaintiffs offer a document that is clearly biased and argumentative in both its choice of factual data and its statement of conclusions. The offered document was not prepared by any expert qualified by the Court. Nor is the offered document presented in a manner so that it could be readily authenticated. Since the offered document does not even rise to the dignity of a learned study and has not been authenticated even as an accurate representation of the hearsay it is, the document cannot be admitted into evidence for any purpose.

VIII.

While Dr. Euphemia Haynes was testifying for the plaintiffs, they offered a statement by Dr. Haynes about the track system dated November 20, 1963, as plaintiffs' Exhibit B-7. The Court has had the benefit of Dr. Haynes' direct testimony and her statement would be a prior consistent statement and, as such, irrelevant. Furthermore, as was the case with her direct testimony, Dr. Haynes' statement is without

basis in fact and is conclusionary. For these reasons plaintiffs' Exhibit B-7 should not be admitted.

IX.

Plaintiffs' Exhibit K-2, a book by Ellis O. Knox, was offered in evidence during the testimony of Mr. Hobson. Mr. Hobson had only the vaguest association with the publication of the book and apparently no association with the writing thereof. The offer is hearsay and should be excluded. Furthermore, it is another gross offering by the plaintiffs and adds the final weight to a wholly unreasonable and burdensome series of evidentiary offerings by the plaintiffs that if admitted would be seriously prejudicial to defendants.

For the reasons stated in this memorandum and for the reasons already on the record in this lawsuit, the documents which are the subject of this memorandum are not admissible into evidence. The defendants wish to preserve their right to make further written objections to the admission of the Office of Education Survey following the cross-examination of Dr. James Coleman.

/s/ Milton D. Korman

/s/ John A. Earnest

/s/ James M. Cashman

/s/ Matthew J. Mullaney

Attorneys for the Defendants

[Certificate of Service]

[Filed September 30, 1966]

MOTION OF DEFENDANTS, HANSEN,
HEWLETT, HAMILTON, SMUCK, STEEL,
STULTS, AND YOCHELSON FOR VOL-
UNTARY DISPLACEMENT

The above-named defendants respectfully move the Court to consider carefully whether it should voluntarily retire from further consideration of this lawsuit on the grounds that, by virtue of prior declarations on the precise issues contained in this case, this Court may not be able to fairly hear, imparitally weigh the evidence presented to it herein, render a completely unbiased ruling, and give to these defendants a fair trial, to all of which these defendants are entitled under law. As further grounds for these defendants' request for consideration by the Court of its voluntary removal from this case are the public expressions of what strongly suggests the Court's predisposition, all as contained in the exhibits marked ____ through ____ incorporated herein and by reference made a part hereof, and which raise the belief in the minds of some that these defendants cannot receive an objective and impartial hearing by this Court.

/s/ Milton D. Korman

/s/ John A. Earnest

/s/ James M. Cashman

/s/ Matthew J. Mullaney

Attorneys for Defendants Han-
sen, Hewlett, Hamilton,
Smuck, Steel, Stults, and
Yochelson

[Certificate of Service]

PUBLIC SCHOOL DESEGREGATION: LEGAL REMEDIES FOR DE FACTO SEGREGATION

J. SKELLY WRIGHT

ONE hundred years ago this country abolished slavery and decreed by solemn constitutional amendment that "all persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside."¹ Thus, at last, our Negro citizens were included in the truths we hold self-evident, "that all men are created equal, that they are endowed by their Creator with certain unalienable Rights, that among these are Life, Liberty and the pursuit of Happiness."²

One hundred years have passed and the promise of equality remains, in large part, unfulfilled. It seems that in these 100 years we have succeeded in changing a system of slavery into a caste system based on race which may, in some respects, be more difficult to uproot than slavery itself.

Before considering the problem of racial discrimination as it confronts this country today, it may be useful briefly to recall how the great hopes and aspirations of 100 years ago were curdled in the aftermath of the Civil War. And it will be particularly interesting to note that the instrument of destruction then—the United States Supreme Court—is now the architect of the new dream of equality and freedom.

I

Immediately following the close of the Civil War, Congress set about the task of insuring, insofar as possible by law, that

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1. U.S. Const., amend. XIV, § 1.

2. U.S. Declaration of Independence.

the rights of the new citizens would be respected. First it considered for enactment a series of civil rights laws. Then, when it became concerned that the Supreme Court might declare them unconstitutional, it proceeded to initiate constitutional amendments which embedded Negro rights in our basic law. The implementation of these amendments followed quickly in the form of the Civil Rights Acts.³

The congressional concern about the post-Civil War Supreme Court was not unwarranted. Nor did the thirteenth, fourteenth and fifteenth amendments succeed in protecting the civil rights legislation from the destructive arm of the Court. In a series of decisions, by a restrictive reading of these amendments, particularly the fourteenth, the Supreme Court made a shambles of the Civil Rights Acts. Statutes protecting the voting rights of Negroes,⁴ outlawing the Ku Klux Klan,⁵ insuring Negro access to public accommodations,⁶ and others, were all declared unconstitutional.

Hardly more than a decade after the close of the Civil War the moral fervor which had supported the recognition of Negro rights was ebbing fast. Discouraged by the action of the Supreme Court, and with this country undergoing an industrial revolution, the great mass of the people turned their attention to more mundane matters. The climate of the times was such that in 1877, after his opponent, Samuel J. Tilden, had won the election for the presidency by over a quarter of a million votes, the followers of Rutherford B. Hayes were able to make a cynical political deal with the Tilden electors in five Southern states under which their votes were cast for Hayes, making him President, in return for which the Hayes forces agreed to, and did, end the protection which the federal government, since the Civil War, had afforded the Negro in the South.⁷

Not long after Hayes assumed the Presidency, segregation laws cautiously began to make their appearances in the states of the old Confederacy. As a substitute for slavery, the Negro would

3. See generally Fairman, *Does the Fourteenth Amendment Incorporate the Bill of Rights?*, 2 Stan. L. Rev. 5 (1949); Grossman, *The Unhappy History of Civil Rights Legislation*, 50 Mich. L. Rev. 1323-26 (1952).

4. *United States v. Cruikshank*, 92 U.S. 542 (1875); *United States v. Reese*, 92 U.S. 214 (1875).

5. *United States v. Harris*, 105 U.S. 629 (1882).

6. *Civil Rights Cases*, 109 U.S. 3 (1883).

7. Woodward, *Reunion and Reaction* (2d ed. 1956).

now be isolated from the mainstream of public life by criminal statutes. Initially, not even the proponents of these laws had confidence in their constitutionality. Enforcement was tentative and usually withdrawn when challenged. Finally, in 1896, a test of the Louisiana statute⁸ which made it a crime for a Negro to invade the public accommodation on a train reserved for whites reached the Supreme Court.

Eight Justices of the Supreme Court in that case, *Plessy v. Ferguson*,⁹ were able to hold that racial segregation, compelled by law, was legal. One lone member of the Court, however, the first Mr. Justice Harlan, delivered the most powerful dissent in the annals of jurisprudence. It read in part:

The white race deems itself to be the dominant race in this country. And so it is, in prestige, in achievements, in education, in wealth and in power. So, I doubt not, it will continue to be for all time, if it remains true to its great heritage and holds fast to the principles of constitutional liberty. But in view of the Constitution, in the eye of the law, there is in this country no superior, dominant, ruling class of citizens. There is no caste here. Our Constitution is color-blind, and neither knows nor tolerates classes among citizens. In respect of civil rights, all citizens are equal before the law. The humblest is the peer of the most powerful. The law regards man as man, and takes no account of his surroundings or of his color when his civil rights as guaranteed by the supreme law of the land are involved. It is, therefore, to be regretted that this high tribunal, the final expositor of the fundamental law of the land, has reached the conclusion that it is competent for a State to regulate the enjoyment by citizens of their civil rights solely upon the basis of race.

In my opinion, the judgment this day rendered will, in time, prove to be quite as pernicious as the decision made by this tribunal in the *Dred Scott* case. . . .

If evils will result from the commingling of the two races upon public highways established for the benefit of all, they will be infinitely less than those that will surely come from state legislation regulating the enjoyment of civil rights upon the basis of race. We boast of the freedom enjoyed by our people above all other peoples. But it is difficult to reconcile that boast with a state of the law which, practically, puts the brand of servitude and degradation upon a large class of our fellow-citizens, our equals before the law. The thin disguise of "equal" accommodations for passengers

8. La. Acts 1890, No. 111.

9. 163 U.S. 537 (1896).

in railroad coaches will not mislead any one, nor atone for the wrong this day done.¹⁰

Racial segregation, having received the benediction of the Supreme Court, spread like a prairie fire through the Southland. Literally hundreds of statutes were passed requiring segregation from the cradle into the grave¹¹—all under pain of imprisonment for violations. The segregation laws were such a success that the legislatures in the Southern states soon turned their attention to disenfranchising the Negro. By the use of grandfather clauses and understanding tests in registration statutes, the registration rolls in practically all of the states of the Confederacy were purged of Negro voters. In Louisiana, for example, over 99 per cent of the Negro voters lost their right to vote. Over 130,000 Negroes in Louisiana alone, one-half of the total registration, were scratched from the voting rolls.¹² Thus, while compelling segregation by law, appropriate steps were taken to insure that the law was not changed.

For almost fifty years from the turn of the century, public apathy toward the plight of the Negro continued. During this time the Negro remained in a state of limbo—half slave and half free. And during this time the politically defenseless and segregated Negro was subjected to 1,780 known lynchings.¹³

After World War II, during which he fought side by side with his white brothers-in-arms, public attention again began to be focused on the plight of the Negro. Guilt feelings were becoming more difficult to suppress. The Supreme Court, now leading the fight for recognition of the Negro's right to full citizenship, began an assault on the wall of segregation. In a series of decisions the Court gradually made it clear that the separate but equal doctrine of *Plessy v. Ferguson* set an unacceptable standard

10. *Id.* at 559, 562.

11. For the citations of many of these statutes, see Supplemental Brief for the United States as Amicus Curiae, pp. 50-63, *Bowie v. Columbia*, 378 U.S. 347 (1964); *Bell v. Maryland*, 378 U.S. 226 (1964); *Robinson v. Florida*, 378 U.S. 153 (1964); *Barr v. Columbia*, 378 U.S. 146 (1964); *Griffin v. Maryland*, 378 U.S. 130 (1964).

12. Woodward, *The Strange Career of Jim Crow* 68 (1955).

13. Hearings on H.R. 41, H.R. 57, H.R. 77, H.R. 223, H.R. 228, H.R. 278, and H.R. 800 Before Subcommittee No. 4 of the House Committee on the Judiciary, 80th Cong., 2d Sess. 39 (1948).

for determining equal protection under the law. And, finally, in the historic *Brown v. Board of Education* opinion, the Chief Justice, speaking for a unanimous Court, held that "separate educational facilities are inherently unequal."¹⁴

Once "separate but equal" was outlawed as a constitutional test in the field of educational facilities, the Court had no difficulty in applying the new principle to other areas in which segregation compelled by law had resulted in a caste system adversely affecting the Negro. State statutes requiring racial segregation in transportation facilities,¹⁵ parks,¹⁶ playgrounds,¹⁷ hospitals,¹⁸ and other public places¹⁹ have all been declared unconstitutional, so that now the last vestiges of the iniquitous separate but equal doctrine have been expunged from the law.

But as we have learned from our experience under the post-Civil War constitutional amendments, it is one thing solemnly to declare the legal rights of Negroes; it is quite another to make recognition of those rights a reality. Ten years have passed since the Supreme Court's historic pronouncement in *Brown v. Board of Education* and, while the border states generally have sought to comply, in most of the states of the old Confederacy compliance, if any, has been, at best, grudging. The simple truth is that, in most of these states, integration of the public schools ten years after *Brown* is less than one per cent effective.

The 1964 Staff Report on Public Education submitted to the United States Commission on Civil Rights discloses that in seven states of the former Confederacy 499 of every 500 Negro pupils attend 100 per cent Negro schools.²⁰ Less than one Negro pupil in 500 attend desegregated schools, and then only on a token basis. Based on the progress in desegregation made the first ten

14. 347 U.S. 483, 495 (1954).

15. *Gayle v. Browder*, 352 U.S. 903 (per curiam), affirming 142 F. Supp. 707 (M.D. Ala. 1956).

16. *New Orleans City Park Improvement Ass'n v. Detiege*, 358 U.S. 54, affirming 252 F.2d 122 (5th Cir. 1958).

17. *Watson v. Memphis*, 373 U.S. 526 (1963).

18. *Simkins v. Moses H. Cone Memorial Hosp.*, 323 F.2d 959 (4th Cir. 1953); cert. denied, 376 U.S. 938 (1964).

19. See *Holmes v. City of Atlanta*, 350 U.S. 879 (1955) (per curiam); *Mayor and City Council v. Dawson*, 350 U.S. 877 (1955) (per curiam).

20. United States Commission on Civil Rights, 1964 Staff Report on Public Education 290-91.

21. 78 Stat. 248, 42 U.S.C.A. § 2000(c)-6 (1964).

years after the Supreme Court handed down its decision in *Brown v. Board of Education*, many more years may be required before the segregated Negro school is eliminated from the deep South.

Progress in desegregation can be accelerated, however, if courts refuse to countenance gerrymandering as a substitute for segregation compelled by law. It is becoming increasingly clear that as Southern school boards change from a dual, that is, separate Negro and white, operation to a single school system, segregation in the schools can remain virtually as before. By careful drawing of neighborhood school boundary lines, the formerly all-white school remains all white, or almost so, and the formerly all-Negro school remains, for all intents and purposes, all Negro. The fact that the segregation is no longer, in terms, compelled by law does not eliminate the discrimination or remedy the inequality. Thus the interdiction of all state statutes compelling racial segregation in public schools is but a short first step on the road to desegregation.

Desegregation in the South may also be accelerated by energetic and effective use of the powers granted the Attorney General under the Civil Rights Act of 1964. Under section 407²¹ of that act the Attorney General may initiate suits in behalf of individuals and ask the district courts to end racial segregation in the public schools, at least where the segregation results from the deliberate act of state officials pursuant to state statute or discriminatory purpose of their own. It is by no means certain, however, that the Attorney General will be any more successful than the NAACP in achieving actual rather than token desegregation. The difficulties inherent in achieving true desegregation are so great, as ten years of experience testify, and the defenses available to school boards resisting every step of the way so many, that only an alert and conscientious continuous effort on the part of both the executive and judicial branches of our government, plus a compelling desire on the part of Negroes generally, can make Section 407 of the 1964 Civil Rights Act an effective instrument in bringing reality to desegregation in the public schools in the deep South.

II

The obstacles to further integration forecast for the South, once the illegality of de jure segregation is accepted, are already being encountered in other parts of the country. De facto racial segregation infects the public school systems in most urban areas of the North and West. This de facto segregation has its genesis in a combination of conditions, the combination varying from city to city, sometimes from neighborhood to neighborhood in the same city. Historical gerrymandering is a common cause of de facto segregation; restrictive covenants in land titles segregating neighborhoods is another common cause. But more and more it is becoming apparent that perhaps the primary cause of de facto segregation in urban schools is the socio-economic condition of the Negro. The inability of many Negroes, because of overt and covert job discrimination, to find proper employment drives them and their families into the segregated slums which disgrace many of our metropolitan areas.

To understand the magnitude of the problem of de facto segregation, it may be useful to cite some statistics. Of Chicago's 443 elementary schools, only 40 are integrated; 280 are white schools with student bodies less than 10 per cent Negro; and 123 are Negro schools with student bodies less than 10 per cent white.²² Thus, using the 10 per cent mixing factor, only 9 per cent of Chicago's elementary schools are integrated. If the 10 per cent mixing factor were reduced to 1 per cent, 77 per cent of the elementary schools in Chicago would still be classified as segregated. There is, of course, no compulsory segregation in the Chicago schools. Segregation results from adherence to the neighborhood school assignment policy. But historical gerrymandering has played a significant part in the problem presented by de facto segregation in Chicago today.

Still using the 10 per cent mixing factor, only 29.9 per cent of the public elementary schools in the nation's capital are integrated.²³ Of Washington's 129 public elementary schools, 87

22. Advisory Panel on Integration of the Public Schools, Report to the Board of Education of the City of Chicago 56 (1964).

23. The statistics on the Washington, New York and Oakland public schools are from United States Commission on Civil Rights, 1963 Staff Report on Public Education 144-45.

are Negro, 15 are white, and 27 are integrated. Using the same factor, of New York's 578 public elementary schools 263 (45.5%) are integrated, 118 (20.4%) are white, and 197 (34.5%) are Negro. In Oakland, California, 29 (45.4%) of the 64 public elementary schools are integrated, 23 (35.9%) are white, and 12 (18.7%) are Negro.

These statistics, and more like them from other cities, indicate that racial segregation in public schools in the North and West, except as to cause, is not unlike that in the South. Presumably the effect is the same. As to that effect the Supreme Court said in *Brown*:

We come then to the question presented: Does segregation of children in public schools solely on the basis of race, even though the physical facilities and other "tangible" factors may be equal, deprive the children of the minority group of equal educational opportunities? We believe that it does. . . .

To separate them from others of similar age and qualifications solely because of their race generates a feeling of inferiority as to their status in the community that may affect their hearts and minds in a way unlikely ever to be undone. . . .

We conclude that in the field of public education the doctrine of "separate but equal" has no place. Separate educational facilities are inherently unequal.²⁴

Various state officials and agencies in the North and West have affirmed the Supreme Court's finding of the damage suffered by the segregated Negro child. In its Report to the Chicago Board of Education, the Advisory Panel on Integration of the Public Schools, March 31, 1964, stated:

The personality characteristics of the child who has suffered from discrimination, the self-hatred, the deep sense of frustration, the unexpected aggression, and the consequent difficulty in relating to others might be expected to have a major effect on his academic achievement.²⁵

The Policy Statement on Integration adopted by the Board of Education of New York City, December 1964, finds segregated schools also damage white children:

24. *Brown v. Board of Educ.*, 347 U.S. 483, 493-95 (1954).

25. Advisory Panel on Integration of the Public Schools, *supra* note 22, at 46.

The Supreme Court of the United States reminds us that modern psychological knowledge indicates clearly that segregated, racially homogeneous schools damage the personality of minority group children. These schools decrease their motivation and thus impair their ability to learn. White children are also damaged. Public education in a racially homogeneous setting is socially unrealistic and blocks the attainment of the goals of democratic education, whether this segregation occurs by law or by fact.

And Attorney General Mosk of California, in an opinion dated August 15, 1963, to the President of the California State Board of Education, advised:

The United States Supreme Court in *Brown v. Board of Education* and the Supreme Court of California in *Jackson v. Pasadena City School District* took judicial notice that school segregation results in the emotional crippling of students of minority races. Whether segregation is the result of state policy or merely reflective of neighborhood condition makes little difference to its victims.

Thus it is clear from the Supreme Court in *Brown*, from the various state authorities that have considered the problem, and from the historical background of slavery and the continuing discrimination against the Negro citizen that a segregated Negro school, whether in the North or in the South, is inherently unequal to its white counterpart. In addition to the damage done by segregated education to the minds and hearts and ability to learn of Negro children, to segregate them in public schools, for whatever reason, is to brand them as inferior—in their own minds and in the public mind. The unfortunate fact is that in contemporary America race and color are

associated with status distinctions among groups of human beings. The public schools reflect this larger social fact in that the proportion of Negroes and whites in a given school is often associated with the status of the school. The educational quality and performance to be expected from that school are frequently expressed in terms of the racial complexion and general status assigned to the school. It is well recognized that in most cases a school enrolling a large proportion of Negro students is viewed as a lower status school.²⁶

26. Statement Proposed by the New York State Education Commissioner's Advisory Committee on Human Relations and Community Tensions, June 17, 1963.

Experience with segregated Negro schools, in the North as well as the South, confirms the public impression that Negro schools, in addition to being per se inferior, are usually demonstrably inferior in fact. Surveys of school systems throughout the country demonstrate time and again that the Negro school, as compared with its white counterpart, is overcrowded and understaffed—usually with inferior teachers. The experienced teachers with a choice of assignment avoid the Negro school. The Negro school buildings themselves are often run down and ill kept. The amount spent to educate the Negro child is, in many cases, substantially less than that spent on the white.

In addition to these overt differences, Negro children in Negro schools suffer from lack of exposure to the middle class culture found in white but not in Negro schools. Shunted off in the slum school, the Negro child is denied the stimulation of competition and association with children of other races and cultures. In sum, whenever a substantial number of Negro children attend public schools in a given area, it appears that the Negro children usually find themselves in schools populated primarily by other Negro children and that these Negro schools somehow usually seem to receive less attention from the school board in terms of money, teachers, books and building care.

Thus in most of the school cases arising from the metropolitan areas, it should not be necessary to reach the issue of whether adventitious de facto segregation, without more, is unconstitutional. In the *New Rochelle* case,²⁷ for example, an historical gerrymandering pattern resulting in a primarily Negro school was found offensive to the equal protection clause. The school board, of course, defended on the ground that the school in question was a neighborhood school and that there was no intention in fixing the boundaries to limit its attendance to Negroes. The court was unimpressed with the board's professions of innocent intent—with the result that now Negro children in New Rochelle are distributed throughout the school system and a healthy educational situation obtains in that suburban area.

The Negro plaintiffs, however, were not so fortunate in their efforts to desegregate Gary, Indiana, and Kansas City, Kansas. In those cities, in spite of admitted substantial segregation of Negro children and strong proof of historical gerrymandering,

27. *Taylor v. Board of Educ.*, 294 F.2d 36 (2d Cir.), cert. denied, 368 U.S. 540 (1961).

inferior Negro school facilities and inferior Negro faculties in the Negro schools, the district courts in those cases²⁸ were unable to find either inequality or intentional racial segregation. The courts seemed to be satisfied with the neighborhood school concept of school districting, in spite of the fact that the school boards knew when they drew the boundaries for the Negro schools that those schools would be racially segregated. And there is no suggestion in either the Gary or the Kansas City cases that the courts ever heard of the Princeton Plan for eliminating de facto segregation which has worked satisfactorily in that and similar cities for almost a decade, or of selecting school sites on the dividing line between the white and Negro residential areas so that the schools may serve both races, or even of open enrollment, used initially as a corrective in New Rochelle, which would have allowed children in a segregated school district to attend a public school of their choice outside that district.

It seems that the courts in the Gary and Kansas City cases were more than willing to allow this entire matter to be handled by the school boards, relying on the boards' judgment and good faith in spite of a long history of segregated schools in the cities concerned. The courts in these cases seem to have applied the principle that, as long as there was a rational relationship between what the school board did and a legal end to be achieved, the courts' inquiry was concluded. The courts rejected the suggestion that the end intended was racial segregation, and held that the boards' actions perpetuating racial segregation were reasonable under the circumstances.

It is true, of course, that the Supreme Court in the recent past, in the field of private business and economics, has not looked behind an action of a state agency as long as the purpose of the agency in instituting the action was a legal one and the action was rationally related to that purpose.²⁹ But, as we shall see, the rational-relationship doctrine has no application to cases involving racial discrimination and public education. Even if it

28. See *Downs v. Board of Educ.*, 336 F.2d 988 (10th Cir. 1964) (affirming reported opinion of district court), cert. denied, 33 U.S.L. Week 3284 (U.S. Mar. 2, 1965); *Bell v. School City*, 213 F. Supp. 819 (N.D. Ind.), aff'd, 324 F.2d 209 (7th Cir. 1963).

29. See *Ferguson v. Skrupa*, 372 U.S. 726, 731-32 (1963); *Williamson v. Lee Optical Co.*, 348 U.S. 483, 491 (1955).

did, it would be highly questionable whether permitting segregated Negro schools is rationally related to the education of those children who must attend them.³⁰

As I read these *de facto* segregation cases from the North and West, I must confess to a little amusement. After watching, from close range, some of my judicial brethren in the South twisting and turning and reaching for a result in race cases that will not upset the status quo or the local power structure, it seems that now I may be treated to what appear to be similar performances by my brethren in other parts of the country.

Although the Gary and Kansas City cases both concluded that the federal courts were powerless with respect to relieving *de facto* segregation, the issue is far from closed. The final word on this subject will, of course, be spoken by the Supreme Court. It is inconceivable that the Supreme Court will long sit idly by watching Negro children crowded into inferior slum schools while the whites flee to the suburbs to place their children in vastly superior predominantly white schools.

Before the Supreme Court acts, some other federal courts³¹ no doubt will take a harder look at *de facto* segregation and will be less inclined to accept the suggestion that the state and its agencies are not, in some degree at least, responsible for it and helpless to correct it. Until now the cases have focused on the responsibility of the school boards administering the segregated schools, and it is clear that these agencies, through historical gerrymandering and other devious means, have contributed to racial imbalance in the schools. But state action contributing to segregated schools is not limited to school boards. And the fourteenth amendment speaks to the state itself.³² As Mr. Justice Brandeis reminds us, "It is a question of the power of the State

30. "Segregation in public education is not reasonably related to any proper governmental objective . . ." *Bolling v. Sharpe*, 347 U.S. 497, 500 (1954).

31. *Barksdale v. Springfield School Comm.*, 237 F. Supp. 543 (D. Mass. 1965); *Blocker v. Board of Educ.*, 226 F. Supp. 208 (E.D.N.Y. 1964); *Branche v. Board of Educ.*, 204 F. Supp. 150 (E.D.N.Y. 1962), indicate that the rationale of the Gary and Kansas City cases is not acceptable in the Eastern District of New York or in the District of Massachusetts. See also *Jackson v. Pasadena City School Dist.*, 59 Cal. 2d 876, 382 P.2d 878, 31 Cal. Rptr. 606 (1963).

32. *Griffin v. School Bd.*, 377 U.S. 218 (1964); *Hall v. St. Helena Parish School Bd.*, 197 F. Supp. 649 (E.D. La. 1961) (*per curiam*), *aff'd*, 287 F.2d 376 (5th Cir.), *aff'd*, 368 U.S. 515 (1962) (*per curiam*).

as a whole;' . . . the powers of the several state officials must be treated as if merged in a single officer."³³

Where state policy expressed by its several agencies lends itself to, and leads toward, segregated schools, the responsibility of the state is plain. For example, where state policy with reference to housing, or state encouragement of private racial covenants in housing, lead to residential segregation and the school board uses the neighborhood plan in making pupil assignments, the school segregation that results is clearly the responsibility of the state. Certainly the state will not be allowed to do in two steps what it may not do in one. By taking a broader look at state policy and all contributing state agencies, federal courts may be more successful in finding state complicity in segregation. Thus, in most cases, where a forthright effort is made by the courts to determine the cause of racial imbalance, it will be unnecessary to reach the question as to what a state may do, or must do, to relieve purely adventitious segregation. In this connection, however, it should be emphasized again that as long as the federal judges hearing segregation cases, in the North or the South, are satisfied with the status quo, it will be more difficult for them to find that racial imbalance in the public schools is not the result of neutral causes.

Where a forthright effort is made to determine the cause of racial imbalance, the probability of finding state action in segregated Negro schools, in some degree at least, is increased immeasurably. Discrimination in job opportunities, housing and other necessities drives Negroes into the segregated slums, and application of the neighborhood school policy seals their children in the slum school which these children are compelled by law to attend. Theoretically, the state's compulsory attendance laws may be satisfied by admission to an accredited private school. Some white children, of course, do attend private schools. But to the Negro child the compulsory attendance law often means only one thing: he must attend the segregated slum school in his neighborhood. This fact alone, the legal compulsion to attend the segregated school, should be sufficient state action to bring all de facto segregation within the rule of *Brown*.

33. *Iowa-Des Moines Bank v. Bennett*, 284 U.S. 239, 244-45 (1951). ||

State action is also obvious in the use of school boundaries which inevitably result in a segregated Negro school. When school authorities consciously use school district lines, knowing the result will be a segregated Negro school, the action and the intention of the state are clear.³⁴ Again the compulsory attendance law, superimposed on the school boundary, provides segregation compelled by law within the rule of *Brown*.

The argument is made, of course, that, irrespective of the resulting segregation, the action of the school board is rationally related to the purpose of education and, therefore, courts must ignore the segregation. But, as already indicated,³⁵ rational-relationship is not the test of the legality of state action where that action results in racial segregation. While, "[n]ormally, the widest discretion is allowed the legislative judgment in determining whether to attack some rather than all of the manifestations of the evil aimed at; and normally that judgment is given the benefit of every conceivable circumstance which might suffice to characterize the classification as reasonable rather than arbitrary and invidious,"³⁶ state action resulting in racial segregation, even though "pursuant to a valid state interest, bears a heavy burden of justification, . . . and will be upheld only if it is necessary, and not merely rationally related to, the accomplishment of a permissible state policy."³⁷

In short, where racial segregation results from state action, the officials responsible therefor must show, not that their action was only rationally related to a legitimate state purpose, but that there is no way reasonably to accomplish that purpose absent racial segregation. Otherwise intent to segregate will be inferred. And whatever arguments there may be in favor of a neighborhood school policy, no one would seriously suggest that there is no other rational basis for assigning children to schools.

III

Assuming that in some instances school segregation may be purely adventitious, the question has arisen as to whether a state

34. *Taylor v. Board of Educ.*, 294 F.2d 36 (2d Cir.), cert. denied, 363 U.S. 940 (1961). Compare *Gomillion v. Lightfoot*, 364 U.S. 330 (1960).

35. See note on supra and accompanying text.

36. *McLaughlin v. Florida*, 379 U.S. 184, 191 (1954).

37. *Id.* at 196.

may voluntarily undertake to relieve the racial imbalance. In my judgment, states may not only take the necessary steps to relieve adventitious segregation, but, in so doing, may consider race. When racial imbalance infects a public school system, there is simply no way to alleviate it without consideration of race. But those who really, but covertly, want to maintain the segregated status quo cry: "The Constitution is color-blind." Securely they wrap themselves in the famous words of Mr. Justice Harlan I, and point to the language in *Brown*³⁸ indicating that classification on the basis of race violates the equal protection clause.

Like most aphorisms, Mr. Justice Harlan's felicitous phrase cannot be taken literally. Certainly the great Justice would be alarmed if he were aware of the use to which it is presently being put. The Constitution not only recognizes Negroes as such, but makes specific provision for their protection in the thirteenth, fourteenth and fifteenth amendments. And the language in *Brown* relates to invidious recognition of race for purposes of discrimination. There is nothing whatever in *Brown* which suggests that recognition of race to relieve an inequality violates the fourteenth amendment. Indeed, as *Brown* fully recognizes, to relieve an inequality with respect to the Negro was, and is, precisely the purpose of the fourteenth amendment.

The suggestion that the state must remain neutral with respect to race was rejected in the Japanese relocation cases³⁹ in which, for national defense purposes, the placing of a burden on a race was approved. It is strange indeed that this suggestion should be advanced again to prevent the state from relieving a racial inequality. Certainly there is no constitutional right to have an inequality perpetuated.

Voluntary action by school authorities seeking to relieve racial imbalance is easily supported once the "the Constitution is color-blind" argument is analyzed and answered. It is difficult to understand how a court could actually hold that a state may not act to relieve the inequality caused by de facto

38. *Brown v. Board of Educ.*, 347 U.S. 483, 495 (1954).

39. *Korematsu v. United States*, 323 U.S. 214 (1944); *Hirabayashi v. United States*, 320 U.S. 81 (1943).

segregation; yet several courts have done precisely that.⁴⁰ There must be something beguiling about the "color-blind" cliché, particularly to those whose sense of social and racial justice leaves something to be desired. "The Constitution is color-blind" is being used by some today the same way the Court in *Plessy v. Ferguson* used the deceptively simple "separate but equal" slogan. Bitter experience has shown, however, that "separate" is never "equal" and that the Constitution, while in some respects color-blind, is not insensitive to inequality.

Several states, principally New York, New Jersey and California, have undertaken to reduce the racial imbalance in their schools.⁴¹ This effort, of course, has met with stubborn resistance from those enjoying the present inequality. Parents of children attending the pure white, or nearly so, schools have brought law suits in New York to prevent correction of racial imbalance. After some initial success at the trial level, the New York Court of Appeals has upheld the right of the Board of Education to act affirmatively to correct racial imbalance.⁴² Thus, as far as New York is concerned, absent arbitrary action, school authorities have a free hand in eliminating the inequality of racial segregation in the public schools.

IV

Whether a state can be, and should be, compelled by law to correct purely adventitious *de facto* segregation in its public schools admittedly present serious problems—both legal and practical. This question also involves the emotional area of state's rights. How far should the courts go in requiring the states affirmatively to afford equal opportunity to equal education? Is the enforcement of this right sufficiently important to risk

40. See, e.g., *Strippoli v. Bickel*, 42 Misc. 2d 475, 248 N.Y.S.2d 588 (Sup. Ct.), reversed, 21 App. Div. 2d 365, 250 N.Y.S.2d 365 (4th Dep't 1964); *Application of Vetere*, 41 Misc. 2d 200, 245 N.Y.S.2d 682 (Sup. Ct. 1963), modified, 21 App. Div. 2d 561, 251 N.Y.S.2d 430 (3d Dep't 1964); *Balaban v. Rubin*, 40 Misc. 2d 249, 242 N.Y.S.2d 973 (Sup. Ct. 1963), rev'd, 20 App. Div. 2d 438, 248 N.Y.S.2d 574 (2d Dep't.), aff'd, 14 N.Y.2d 193, 199 N.E.2d 375, 250 N.Y.S.2d, cert. denied, 379 U.S. 881 (1964).

41. The New York and California State Boards of Education require local school authorities to establish attendance areas for schools which, insofar as practicable, will avoid racial segregation. The Commissioner of Education of the State of New Jersey has taken a similar position.

42. *Balaban v. Rubin*, 14 N.Y.2d 193, 199 N.E.2d 375, 250 N.Y.S.2d 281, cert. denied, 379 U.S. 881 (1964).

further assaults on the federal courts in general and the Supreme Court in particular? If the Supreme Court does not undertake this burden, at least initially, by recognizing the constitutional right to equal educational opportunity, can we confidently assume that the Congress or the states will protect the Negro in the realization of this right? Perhaps some background on the importance of public education in this country may be helpful in answering these questions.

The importance of general education, at least at the elementary and high school level, is no new dogma. It is as old as the theory of popular government. On these shores, it has always been one of the principal articles of the democratic faith. In 1787, in the Northwest Ordinance, the Continental Congress declared: "[S]chools and the means of education shall forever be encouraged."⁴³ Jefferson termed general education the only "sure foundation . . . for the preservation of freedom,"⁴⁴ "without which no republic can maintain itself in strength."⁴⁵ Today, all the more, it remains "the very foundation of good citizenship."⁴⁶ But, because our society has grown increasingly complex, education is now also an economic necessity. "In these days, it is doubtful that any child may reasonably be expected to succeed in life if he is denied the opportunity of an education."⁴⁷ Thus, adequate schooling is no longer a privilege that can be made available to the few; it is the indispensable equipment of all men.

The critical role of education in our contemporary society gives meaning to the associated constitutional rights. But the full importance of the state's obligation to provide equal education cannot be appreciated without noticing the long and consistent history of general education as a governmental function.

Washington,⁴⁸ Jefferson,⁴⁹ Madison,⁵⁰ and John Adams⁵¹

43. Ordinance of 1787, § 14, art. 3.

44. Letter from Thomas Jefferson to Whyte, Aug. 13, 1786, in 5 Writings of Thomas Jefferson 396 (Berg ed. 1907).

45. Letter from Thomas Jefferson to John Tyler, May 26, 1810, in 12 Writings of Thomas Jefferson 393 (Berg ed. 1907).

46. *Brown v. Board of Educ.* 347 U.S. 483, 493 (1954).

47. *Ibid.*

48. See, e.g., Letter from George Washington to Samuel Chase, Jan. 5, 1785, in 28 Writings of George Washington 27 (Bicentennial ed. 1938).

49. For Jefferson's own summary of his proposed "Bill for the More General Diffusion of Knowledge," see his Notes on the State of Virginia 146-49 (Peden ed. 1955).

50. Letter from James Madison to Thomas W. Gilmer, Sept. 6, 1830, in *The Complete Madison* 314-15 (Padover ed. 1953).

51. See Adams, *Dissertation on the Canon and the Feudal Law* (1765), in 3 Works of John Adams 455-56 (Charles Francis Adams ed. 1851).

all advocated governmental responsibility in the diffusion of knowledge through common schools. With such leadership, the public school movement soon took root, so that, by 1850, almost every state in the Union had at least made a start toward a comprehensive system of education.⁵² There was then no retreat from the view that education is a state function. On the contrary, except for the temporary disruption resulting from the Civil War, the next century is a chronology of progress, studded with important reaffirmations of the doctrine. Very soon most of the states solemnly proclaimed a right to public education in their constitutions. Significantly, the 39th Congress, which drafted the fourteenth amendment, put down public education as one of the fundamental tenets of republicanism,⁵³ and their immediate successors imposed it as a pre-condition to readmission of the states still considered in rebellion and to the admission of new states.⁵⁴ The full development came with the adoption of compulsory school attendance laws which necessarily imply free public education.

The courts, also, have long characterized education as a function of the state. As early as 1874, Judge Cooley, whose *Constitutional Limitations* had appeared in the year of the ratification of the fourteenth amendment, expressed "no little surprise" that anyone should question the propriety of the state's furnishing "a liberal education to the youth of the state in schools brought within the reach of all classes."⁵⁵ He "supposed it had always been understood . . . that education, not merely in the rudiments, but in an enlarged sense, was regarded as an important practical advantage to be supplied at their option to rich and poor alike, and not as something pertaining merely to the culture and accomplishment . . . of those whose accumulated wealth enabled them to pay for it."⁵⁶ In 1907, the Supreme Court, speaking through Mr. Justice Holmes, recognized that education is properly considered "one of the first objects of public care."⁵⁷ And in 1947, Mr. Justice Black, also for the Supreme Court, wrote: "It is

52. See *Brown v. Board of Educ.*, 347 U.S. 483, 489 n.4 (1954) and authorities cited therein.

53. See, e.g., Act of July 16, 1866, ch. 200, 14 Stat. 173, 176 (1866); Act of March 2, 1867, ch. 157, 14 Stat. 434 (1867).

54. *McCullum v. Board of Educ.*, 333 U.S. 203, 220-21 & n.9 (1948) (opinion of Mr. Justice Frankfurter).

55. *Stuart v. School Dist. No. 1*, 30 Mich. 69, 75 (1874).

56. *Ibid.*

57. *Interstate Cereal St. Ry. v. Massachusetts*, 207 U.S. 70, 81 (1907).

much too late to argue that legislation intended to facilitate the opportunity of children to get a secular education serves no public purpose."⁵⁸ Now even college training has become a public concern. As Mr. Justice Frankfurter put it, "The need for higher education and the duty of the state to provide it as part of a public educational system, are part of the democratic faith of most of our states."⁵⁹ The full impact of this development was summed up in *Brown v. Board of Education*: "Today, education is perhaps the most important function of state and local governments."⁶⁰

From the fact that public education is the states' most important function, it does not necessarily follow that segregated public education, whatever the cause, is illegal. But the importance of public education in a democratic society imperatively requires affirmative action on the part of the state to assure each child his fair share, and a child in a segregated Negro school does not receive his fair share. Public education, once offered by the state, "must be made available to all on equal terms."⁶¹ And segregated education, being "inherently unequal," is therefore unconstitutional.⁶²

A racially segregated Negro school is an inferior school. It is "inherently unequal."⁶³ No honest person would even suggest, for example, that the segregated slum school provides educational opportunity equal to that provided by the white suburban public school. Thus children compelled by state compulsory attendance laws to attend the segregated Negro school are deprived of equal protection of the law. The fact that the classification to attend the school is based on geography,⁶⁴ and not on race, does not necessarily make the school less segregated or less inferior. Nor does it make the classification less illegal unless it can be shown that no reasonable classification will alleviate the inequality.⁶⁵

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58. *Everson v. Board of Educ.*, 350 U.S. 1, 7 (1947).
 59. *Board of Educ. v. Barnette*, 319 U.S. 624, 656 (1943) (dissenting opinion).
 60. 347 U.S. 483, 493 (1954).
 61. *Ibid.*
 62. *Id.* at 495.
 63. *Brown v. Board of Educ.*, 347 U.S. 483 (1954).
 64. Compare the reapportionment cases: *Reynolds v. Sims*, 377 U.S. 533 (1964); *Wesberry v. Sanders*, 376 U.S. 1 (1964); *Gray v. Sanders*, 372 U.S. 368 (1963). See also *Barksdale v. Springfield School Comm.*, 237 F. Supp. 543 (D. Mass. 1965).
 65. *McLaughlin v. Florida*, 379 U.S. 184 (1964). Compare *Sherbert v. Ver-*
ter, 374 U.S. 398, 406-09 (1963).

The touchstone in determining equal protection of the law in public education is equal educational opportunity, not race. If classification by race is used to achieve the invidious discrimination, the constitutional insult is exacerbated. But the focus must remain on the result achieved. If the untoward result derives from racial classification, such classification is per se unconstitutional. Where the result is segregation, and therefore unequal educational opportunity, the classification used, whatever it is, is constitutionally suspect and a heavy burden is placed on the school board and the state to show, not only innocent intent, but also lack of a suitable alternative.⁶⁶ In short, since segregation in public schools and unequal educational opportunity are two sides of the same coin, the state, in order to provide equal educational opportunity, has the affirmative constitutional obligation to eliminate segregation, however it arises.

Our experience with the cases involving racial segregation in Southern schools has blurred the issue presented by de facto segregation. In the Southern school cases the classification was on the basis of race. It was this classification that achieved the segregated, and therefore unequal, schools. What made the classification invidious, and therefore unconstitutional, was the inequality it produced. When the same invidious result is achieved by another classification, that classification likewise must be tested by the Constitution.

Perhaps the clearest statement of the principle involved in adventitious de facto segregation has been made by Chief Judge Sweeney of the United States District Court for the District of Massachusetts in the only case to date, state or federal, squarely holding that a state may be required to relieve racial imbalance in the public schools. In ordering the city of Springfield to file a desegregation plan for its schools by April 3, 1965, Judge Sweeney wrote:

The defendants argue, nevertheless, that there is no constitutional mandate to remedy racial imbalance. . . . But that is not the question. The question is whether there is a constitutional duty to provide equal educational opportunities for all children within the system. While *Brown* answered that question affirmatively in the context of coerced segregation, the constitutional fact—the inadequacy of segregated education—is the same in this case, and

66. *McLaughlin v. Florida*, *supra* note 65.

I so find. It is neither just nor sensible to proscribe segregation having its basis in affirmative state action while at the same time failing to provide a remedy for segregation which grows out of discrimination in housing, or other economic or social factors. Education is tax supported and compulsory, and public school educators, therefore, must deal with inadequacies within the educational system as they arise, and it matters not that the inadequacies are not of their making. This is not to imply that the neighborhood school policy per se is unconstitutional, but that it must be abandoned or modified when it results in segregation in fact.⁶⁷

There can, of course, be no mathematical formula⁶⁸ to determine at what point the unequal educational opportunity inherent in racial imbalance and de facto school segregation rises to constitutional dimension. A judgment must be made in each case based on the substantiality of the imbalance under the particular circumstances. Once substantial racial imbalance is shown, however, no further proof of unequal educational opportunity is required. What may be substantial imbalance in Boston, where the Negro school population is relatively small, may not be in Washington, where the Negro school population is approaching 90 per cent. Numbers alone do not provide the answer. The relevant population area is an important consideration. Is the relevant area the city alone or the suburbs as well? A variety of other circumstances may also be important in answering this sometimes difficult question.

The judicial process is equipped to develop the necessary evidence and to make the judgment as to substantial racial imbalance. The word "substantial" does not provide a certain or mechanical guide to decision, but judicial judgments based on similar guides are made routinely. The test for negligence in every case is whether the party charged acted "reasonably" or as "the reasonably prudent person would have" under the circumstances. In every jury case, civil and criminal, the judge decides whether the evidence against the defendant is "substantial" before he allows the case to go to the jury. The examples can be multiplied, but the point is already made. The determination as to substantial racial

67. *Barkdale v. Springfield School Comm.*, 237 F. Supp. 543, 546 (D. Mass. 1965).

68. For example, a school, though mathematically racially imbalanced as compared with other schools in the area, ordinarily would not be racially segregated in the constitutional sense unless the Negro population of the school outnumbered the white.

imbalance, and therefore unequal educational opportunity, is clearly within the competence of the judiciary. As in other areas involving due process and equal protection of the law, the guidelines will have to be staked out on a case-by-case basis.⁶⁹ Once substantial racial imbalance is shown, however, the case for relief is complete and the burden of going forward with the evidence falls on the state.⁷⁰

V

Assuming the constitutional question is answered affirmatively in favor of the Negro, the question of appropriate remedy arises. What can a state do—what can a court require a state to do—to relieve racial imbalance? In short, what, if any, remedies are available?

Initially, public school authorities must be cured of the neighborhood school syndrome. The neighborhood school, like the little red school house, has many emotional ties and practical advantages. The neighborhood school serves as the neighborhood center, easily accessible, where children can gather to play on holidays and parents' clubs can meet at any time. But twentieth-century education is not necessarily geared to the neighborhood school. In fact, the trend is definitely in the opposite direction. Educational parks, each consisting of a complex of schools, science buildings, libraries, gymnasiums, auditoriums and playing fields, are beginning to replace the neighborhood school. Although the development of the educational park in education is unrelated to the question of racial segregation, its use in relieving racial imbalance in public schools is obvious. Instead of having neighborhood schools scattered through racially homogeneous residential areas, children of all races may be brought together in the educational parks.

In many areas where the educational park is not feasible, simple changes in the existing school district lines may relieve racial imbalance. For example, the homogeneous character of a school in a segregated neighborhood may be changed by redrawing its district lines along with the district lines of the nearest white school so as to include Negro and white pupils in both schools. Also, under the well-known Princeton Plan, where the district lines of two racially diverse schools are contiguous, the

.....⁶⁹. *Davidson v. New Orleans*, U.S. 97, 104 (1877).-----

⁷⁰. See note 65 *supra*.

racial imbalance can be relieved by limiting the grades in one school from kindergarten to third and in the other from fourth to sixth. And where new schools are to be built to accommodate the expanding school population, the sites for these schools should be, not in Negro or white residential areas, but near the dividing line so that the children living in both areas may be included in each school district. These plans, alone or in combination, when properly used, may well suffice to eliminate the inequality arising from the segregated school in most areas. But in some sections of our large cities, because of the density of the residential segregation, Negro schools are back to back. Princeton Plans and the like are not geared to this problem, but educational parks do provide the answer to Harlem-type residential situations. And pending the construction of the educational parks, open enrollment may be used as a temporary expedient.

An even more difficult problem is presented by the flight of the white population to the suburbs. The pattern is the same all over the country. The Negro child remains within the political boundaries of the city and attends the segregated slum school in his neighborhood, while the white children attend the vastly superior white public schools in the suburbs. The situation is accurately described in the 1964 Advisory Panel Report to the Board of Education of the City of Chicago:

Finally, it cannot be too strongly stressed that programs to effect school integration must reckon with the fact that the white elementary school child is already in the minority in the public schools of Chicago and the time is not far off when the same will be true of the white high school student. Unless the exodus of white population from the public schools and from the City is brought to a halt or reversed, the question of school integration may become simply a theoretical matter, as it is already in the nation's capital. For integration, in fact, cannot be achieved without white students.⁷¹

While a court, in proposing or approving a plan of desegregation, may find no great difficulty in ordering the local school authorities to use the Princeton Plan, or one of its variants, or, under the authority of *Griffin v. School Board*⁷² in ordering the local taxing authority or the state to levy taxes to raise funds to

71. Advisory Panel on Integration in the Public Schools, Report to the Board of Education of the City of Chicago 12 (1964).

72. 377 U.S. 218 (1964).

build an educational park, relieving the inequality between the suburban public school and the segregated city slum public school presents a greater challenge. Obviously, court orders running to local officials will not reach the suburbs. Nevertheless, when political lines, rather than school district lines, shield the inequality, as shown in the reapportionment cases,⁷³ courts are not helpless to act. The political thicket, having been pierced to protect the vote,⁷⁴ can likewise be pierced to protect the education of children.

Education, as stated in *Brown*, is "the most important function of the state." And, as shown in *Hell v. St. Helena Parish School Board*,⁷⁵ and *Griffin v. School Board*,⁷⁶ that important function must be administered in all parts of the state with an even hand. The state operates local public schools through its agents, the local school boards, it directly supplies part of the money for that operation, it certifies the teachers, it accredits the schools, and, through its department of education, it maintains constant supervision over the entire operation. The involvement of the state in the operation of its public schools is complete. Indeed, the state is the conduit through which federal money, in increasing amounts, is being funnelled into the public schools. Certainly federal money may not be used to foster an inequality.⁷⁷ Thus no state-created political lines can protect the state against the constitutional command of equal protection for its citizens or relieve the state from the obligation of providing educational opportunities for its Negro slum children equal to those provided for its white children in the affluent suburbs.⁷⁸

When the Supreme Court decided the first reapportionment case, *Baker v. Carr*,⁷⁹ just as when it decided *Brown*, it left to the district courts the task of fashioning the remedy. Undoubtedly, if and when the Supreme Court tackles the suburban vis-à-vis the city slum school problem, in the event of a decision in favor of the complainants, it will again remit the remedy to the

73. See note 64 *supra*.

74. *Baker v. Carr*, 369 U.S. 186 (1962).

75. 197 F. Supp. 649 (E.D. La. 1961) (*per curiam*), *aff'd*, 287 F.2d 376 (5th Cir.), *aff'd*, 368 U.S. 515 (1962) (*per curiam*).

76. 377 U.S. 218 (1964).

77. *Simkins v. Moses H. Cone Memorial Hosp.*, 323 F.2d 959 (4th Cir. 1963), cert. denied, 376 U.S. 938 (1964); see *Bolling v. Sharpe*, 347 U.S. 497 (1954).

78. See note 64 *supra*.

79. 369 U.S. 186 (1962).

district courts, with instructions to ignore the state-created political lines separating the school boards and to run its orders directly against state, as well as local, officials.

VI

I am aware, of course, that what has been said here this evening will not find favor with the advocates of judicial restraint—many of whom have already expressed the view that de facto segregation is a political and social matter which requires a political, not a judicial, solution, that the Congress and the states are equipped to remedy any inequality which may exist in the public schools, and that any attempted judicial resolution of the problem would adversely affect the balance of our federalism by trenching on states' rights.

These objections to judicial intervention into de facto segregation all have a slightly familiar ring. The Supreme Court's opinion in *Brown* was subjected to just such criticism. Yet because of that decision definite progress has been made toward the recognition of Negro rights. The Court's action unquestionably moved other branches of government to act. Is there anyone who seriously thinks that the Civil Rights Act of 1964 would be a reality today without *Brown* and other Supreme Court decisions exposing racial injustice? Is it conceivable that the Southern states would have abolished segregation compelled by law without prodding from the federal courts?

The reapportionment cases are also in point. Does anyone really believe that the state legislatures would have reformed themselves? Legislators elected via the rotten borough system ordinarily would not be expected to vote for its abolition. Perhaps the reapportionment cases do trench on states' rights, but the people who now have a full vote are not complaining.

The advocates of judicial restraint have also been critical of the Supreme Court's work in the field of criminal justice. It is true that the Court has insisted on civilized procedures in state as well as federal criminal courts. An accused in a serious criminal case must now have a lawyer available to represent him, coerced confessions must be excluded from state and federal criminal trials, and state as well as federal police must now respect the fourth amendment. How long should the Supreme Court have waited for the states to civilize their own criminal procedures

before it undertook to protect the constitutional rights of persons accused of crime?

The Supreme Court's intervention into these fields of primary state responsibility was not precipitous. The states were given ample opportunity to correct the evils themselves. Before *Brown*, the Supreme Court handed down a series of decisions in the field of education indicating quite clearly that, if the states did not act to eliminate racial segregation compelled by law, it would. The persistence with which reapportionment cases continued to reach the Supreme Court after it had refused to exercise jurisdiction in *Colegrove v. Green*,⁸⁰ should have been warning enough to the states that, one way or the other, vote dilution was on the way out. And civilizing of state criminal procedures, under gentle urging from the Supreme Court, has been going on since *Brown v. Mississippi*,⁸¹ in which the Court set aside a death sentence based solely on a confession obtained by hanging the accused from a tree.

There is no indication that the Supreme Court will rush into the de facto segregation arena. Two circuit courts of appeals⁸² have already denied relief from de facto segregation and the Supreme Court has stayed its hand. But this is no guarantee that the Court will not act if the problem persists and the states fail to correct the evil. Proper judicial restraint does not include a failure to act where a state has abdicated its responsibility to protect the constitutional rights of its citizens.

Equal educational opportunity is not the only demand of the Negro Revolution of the 1960's, but it is the most important one. Education is the key to social mobility. Without it the Negro will continue to be tied to the segregated status, to the social, intellectual and educational damage suffered by his children begins the day they are born. Repeated studies have confirmed that the ability of Negro children to learn, given equal conditions, is equal to the white.⁸³ But, by school age, the segregated school culture in which they are born and reared has created an educational gap, as compared with the white child, which not only is

80. 328 U.S. 549 (1946).

81. 297 U.S. 278 (1936).

82. *Downs v. Board of Educ.*, 336 F.2d 988 (10th Cir. 1964), cert. denied, 33 U.S.L. Week 3224 (U.S. Mar. 2, 1965); *Hell v. School City*, 324 F.2d 209 (7th Cir. 1963).

never closed, but which actually increases as time goes on.⁸³

It is not enough, therefore, simply to provide equal educational opportunity beginning at the age of six. Until society eliminates these segregated slums, cultural and educational enrichment for slum children must begin at birth. To their great credit, some enlightened states, including New York and California, are already planning just such programs. And the President of the United States, in his recent message on education,⁸⁴ has asked the Congress for legislation providing financial aid to states undertaking pre-school educational programs for slum children.

The American Negro is a totally American responsibility. Three hundred years ago he was brought to this country by our forefathers and sold into slavery. One hundred years ago we fought a war that would set him free. For these last one hundred years we have lived and professed the hypocrisy that he was free. The time has now come when we must face up to that responsibility. Let us erase this blemish—let us remove this injustice—from the face of America. Let us *make* the Negro free.

In closing this, the sixth James Madison Lecture, it is fitting that we note the passing of the man whose conception and guidance made this series possible. It was Edmond Cahn's dream that America would one day fulfill the constitutional promise of equality before the law and yet maintain, by adherence to the Bill of Rights, the individuality of each human being. To this dream he dedicated this series of lectures. It was to this dream, too, that Edmond Cahn gave so much of himself. His inspirational writings will long serve the cause of equal liberty under law.

Edmond Cahn was a concerned man. Injustice in any of its forms disturbed him deeply. He seemed particularly distressed that, in all the years of history, man appeared incapable of molding a just society. But the events of the recent past had given him reason to hope. For in the concluding paragraph of his last published work he wrote:

The condition of democratic man is something new and young on the face of the earth, and his work of political creation is only beginning. In all the sad stages of human history, his is the first that, by the grace of intelligence, can actually will the elements of a just society into practical existence. Now that he has com-

83. See *The Effects of Segregation and the Consequences of Desegregation: A Social Science Statement*, 37 Minn. L. Rev. 427 (1953) (Appendix to Appellants' Briefs in the School Segregation Cases).

84. *Ibid.*

85. 111 Cong. Rec. 499-500 (daily ed. Jan. 17, 1965).

menced to discover his capacities and flex his desires, the work is visibly accumulating power and momentum. I see a world where no man is accounted strong except in justice, rich except in compassion, nor secure except in freedom and peace.⁸⁶

I trust that my friend Edmond Cahn proves as great a prophet as he was a human being.

86. Cahn, *The Predicament of Democratic Man* 187 (1961).

EDITORIAL PAGE

THE RICHMOND NEWS LEADER
MONDAY, SEPTEMBER 19, 1966

The Judge Has Spoken

Usually when a case comes to court, the plaintiffs have some doubt about the outcome — for indeed, the very reputation of justice depends upon at least the outward appearance of objectivity upon the bench. But in the celebrated schools case of Hobson v. Hansen, now being argued in the Federal District Court in the District of Columbia, the appointed Judge already has committed himself publicly upon the issue under litigation; the Judge has spoken not only publicly, but spectacularly, vehemently, and precisely on the question at stake. Yet so far, the special Federal Judge, J. Skelly Wright, has not moved to disqualify himself.

Moreover if Judge Wright follows the recommendations he himself made a year and a half ago, the case will have a profound and direct effect upon the school systems of North Virginia and Maryland. On February 17, 1965, Judge Wright delivered the James Madison Lecture at the New York University School of Law. He spoke about legal remedies for "de facto segregation." He argued that the courts should abandon "judicial restraint," and outlaw any discrimination which might result from the lines of historic school districts, even if it were necessary to cross the boundaries of political divisions. His lecture alluded again and again to the situation in Washington, D.C. He left it clear that there was no way to provide "equal" education in Washington, without a court order to bring together the children of Washington and the children of the Virginia and Maryland suburbs into great, centralized "educational parks."

The unofficial speculations of Judge Wright before the NYU School of Law (since published in two law journals) suddenly took on a large significance last January when Julius W. Hobson and a group of white

and Negro plaintiffs filed suit against the Washington public schools asking relief from de facto segregation in the system. Hobson, a civil rights militant, and his group also sought to dissolve the D.C. School Board, which, under the provisions of the D.C. Code (set by Congress), is appointed by the Federal District judges sitting together. The suit therefore was not only against Carl F. Hansen, the redoubtable Superintendent of Schools, but also against the School Board and the Federal District Court as well. Since Hobson therefore sought to sue the very judges who supposedly had jurisdiction in the case, the Chief Circuit Judge appointed another judge — J. Skelly Wright, who normally sits on the D.C. Court of Appeals.

The key factor in the case is that 90 per cent of the pupils in the D.C. system are Negro and only 10 per cent are white. No matter what Superintendent Hansen were to do, he could not achieve "racial balance" in his schools. Yet since the Brown case of 1954, ideologues have held that all-Negro education is inherently inferior. And Hobson is beseeching the court to make the D.C. system provide "educational opportunities, advantages and facilities. . . equal to [those] afforded and available to white children at public school age similarly situated in adjoining, adjacent, and contiguous areas of Maryland and Virginia. On the face of it, "equality" cannot be obtained without mixing students from the two States and the District.

Hobson's thesis is exactly what was propounded by Judge Wright in his lecture. "Negro children" he says, "suffer from lack of exposure to the middle class culture found in white but not in Negro schools." And again:

Thus children compelled by State compulsory attendance laws to attend the segregated Negro school are deprived of equal protection of the law. The fact that the classification to attend the school is based on geography, and not on race, does not necessarily make the school less segregated or less inferior.

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Therefore he argues that school district lines may be unconstitutional no matter what the intent:

"Where the result is segregation, and therefore unequal educational opportunity, the classification used, whatever it is, is constitutionally suspect and a heavy burden is placed on the school board and the State to show, not only innocent intent, but also lack of a suitable alternative."

Judge Wright, in his lecture, specifically touched on the issue now under litigation.

A judgment must be made in each case based upon the substantiality of the imbalance under particular circumstances. Once substantial racial imbalance is shown, however, no further proof of unequal educational opportunity is required. What may be substantial imbalance in Boston, where the Negro school population is relatively small, may not be in Washington, where the Negro population is approaching 90 per cent. Numbers alone do not provide the answer. The relevant population area is an important consideration. Is the relevant area the city alone or the suburbs as well?

Judge Wright answers his own question:

An even more difficult problem is presented by the flight of the white population to the suburbs. The pattern is the same all over the country. The Negro child remains within the political boundaries of the city and attends the segregated slum school in his neighborhood, while the white children attend the vastly superior white public schools in the suburbs. . . . Obviously court orders running to local officials will not reach the suburbs. Nevertheless, when political lines, rather than school district lines, shield the inequality, as shown in the reapportionment cases, courts are not helpless to act. The political thicket, having been pierced to protect the vote, can likewise be pierced to protect the education of the children.

Judge Wright envisions court orders not only to local school boards, but to State officials as well. If

Hobson wins his case, therefore, one might expect to see Virginia education authorities instructed to prepare a plan of integration with the District; and Maryland likewise, even if this should require massive central parks and elaborate busing. U.S. Education Commissioner Howe doubtless will be there with his hand on the Federal pipeline.

Finally, Judge Wright foresaw the day when District Courts, such as his, would have power to direct the educational system of the nation:

Undoubtedly, if and when the Supreme Court tackles the suburban vis-a-vis the city slum school problem, in the event of a decision in favor of the complainants, it will again remit the remedy to the District Courts, with instructions to ignore the State-created political lines separating the school boards and to run its orders directly against the State, as well as local officials.

Clearly, Judge Wright was an acknowledged partisan in the Hobson issue long before he was appointed to hear the case. It is difficult to see how Superintendent Hansen and his associates can get an objective hearing. Thanks to this special assignment, Judge Wright need not wait for the Supreme Court; he is in a unique position to order his own theories into effect. Virginia's Congressmen ought to be protesting vociferously against this Judge who has already judged.

[Exhibit "C"]

[2202] THE COURT: Between now and tomorrow would counsel get together and see what they can do to get this case set on the road so that we can get it to a conclusion, and we will reconvene tomorrow at ten o'clock unless counsel have some representation they would like to make.

MR. KUNSTLER: I would like to indicate, Your Honor, with reference to the admissibility of the O.

E. Report in the Congressional hearings, we have already filed a memorandum. We sent it directly to the clerk of the District Court, and I assume it will get to Your Honor.

THE COURT: It is probably around somewhere.

MR. KUNSTLER: I just wanted Your Honor to be aware that it is around the courthouse somewhere. I served a copy on Mr. Cashman. I believe you received this memorandum. About three days ago, by mail.

MR. CASHMAN: It hasn't come in.

MR. KUNSTLER: If it didn't, I will send another copy.

THE COURT: Until counsel has further representation we can adjourn until tomorrow at ten o'clock.

MR. EARNEST: Just one minute, Your Honor.

MR. CASHMAN: Your Honor, as I understand your [2203] ruling, the motion for judgment will be argued on 3 October?

THE COURT: Yes.

MR. CASHMAN: Your Honor, the Court is aware that Doctor Coleman's date of appearance is either the second or the third. Those are the only two days we understand he would be —

THE COURT: The second happens to be a Sunday. Monday is the third.

MR. CASHMAN: Then, Your Honor, as I say, could we say this: that our requirement to argue the motion for judgment be set over to the 4th of October so that — and it is dependent, of course, upon obtaining Doctor Coleman on the third. That is the only date we are going to have, to have him.

THE COURT: Mr. Cashman, I want to get on with taking your testimony in this case. I realize you want to file a motion for judgment at the close of plaintiffs' case, as you have a right to do, but I don't think it is necessary, really, to have your case, or the beginning of your case contingent on this motion.

The motion, of course, will attack the plaintiffs' case rather broadly, but realistically the motion can hardly [2204] be successful as to all aspects of the case at this stage and, consequently, I think you ought

to be, as you have promised, ready to move ahead with your witnesses on the 5th of October, and not stand on a technical position that you don't want to proceed with your side of the case until this testimony from this witness, who is now apparently in Europe, is obtained.

I think the Court has tried to cooperate with reference to the trial of this case, and I think it is about time that there be some cooperation from the other direction, and it seems to me that this is an area where there can be some cooperation, and I don't think that you should stand on the technical position that you don't want to go ahead with your case until Doctor Coleman's testimony is taken.

MR. CASHMAN: Well, Your Honor, it may be technical, but we do believe it is very real.

Your Honor, when we talk about this motion for judgment I am not referring to a frivolity that we are going to offer this Court. We think we can meet — and we seriously think we can meet all the contentions of the plaintiffs thus far on our motion for judgment.

[2205] Now, I know the Court is going to be the ultimate arbiter of that issue, but, Your Honor, since we do believe that and we are in dead earnest that we do, we think that it ought not be required of us, as it is not by the rules, until the whole case is in. Otherwise, Your Honor, the filing of such a motion is open-ended and it doesn't serve any logical purpose, it doesn't help the Court, it doesn't help the defendants, and while it might be technical, Your Honor, I offer the Court very sincerely that it is very real, and it is not a technicality.

THE COURT: Well, as I indicated to you when Doctor Coleman was here, that this was your opportunity to examine him at that time, I instructed you then to take that opportunity, and you refused to take it at that time.

Now, the Court feels no obligation to hold the case open for you to get Doctor Coleman again. It was merely a courtesy to you to make arrangements with Doctor Coleman to come back here, or to be available here during his trip here from Europe.

So there doesn't seem to be any concern with reference to this, to Doctor Coleman's testimony, at all so far as the record is concerned. I think the record clearly [2206] shows you were on notice, that you had your opportunity with Doctor Coleman, and you didn't take it.

I know that you have an explanation that you already stated your explanation for the record, and the record will have to speak for itself with reference to that.

I say to you again, it was merely a courtesy that I have held the record open so that you could further cross-examine Doctor Coleman.

The Court's order will stand and we will have the hearing on the motion for judgment on the third, and we will begin the defendants' case, the actual taking of testimony, on October 5th. Did I say October third? October third, and then October fifth. And we will take this testimony tomorrow morning.

Is there anything further, Mr. Cashman?

MR. CASHMAN: Nothing further, Your Honor.

MR. KUNSTLER: I have one thing, Your Honor: I have asked, and I believe served a request on Mr. Cashman for not only the list of his witnesses, which we received. I don't know how complete it is, but it omits the areas of their testimony.

If Your Honor will recall, we submitted to them the areas of the testimony of our witnesses. This would

* * *

[Exhibit "D"]

The Washington Post
August 5, 1966

Letters

Prejudged:

If a judge has made strong remarks in public on an issue not yet decided by the courts, and has taken a definite position on the subject, how can his sitting as judge in a case involving the issue be justified? I am referring to remarks quoted in your newspaper from a speech made in New York by Judge J. Skelly Wright on the subject of de facto segregation, an issue in the case he is hearing which involves D.C. schools.

It would make just as much sense to have the case heard by judges of the U.S. District Court for the District of Columbia, even though they are among the defendants. The question would seem to be whether anyone with strong opinions can look at evidence objectively and impartially.

MABEL E. MORRIS.

Washington.

[Exhibit "E"]

U.S. NEWS & WORLD REPORT, Aug. 1, 1966

ATTACKED IN COURT:

NORTHERN SEGREGATION

WASHINGTON—A suit now being heard in federal court could become another landmark in the long fight over integration of public schools.

Aim of the court action is to break up de facto segregation, which results from housing patterns in big Northern cities. The federal court is being asked to declare that such segregation is as discriminatory

and unconstitutional as the type of segregation-by-law that the U.S. Supreme Court ruled against 12 years ago.

Such a ruling could upset the system of neighborhood schools, and send Negro children to classes in white suburbs.

Plaintiffs in the suit are 19 Negroes — 18 parents and children and one teacher. The defendant is the school system of the District of Columbia. The judge is J. Skelly Wright of the U.S. Court of Appeals for the District, regarded as a "liberal" on the integration question.

The suit charges that school officials have, "intentionally" discriminated against Washington's Negro students, who make up 89.4 per cent of the school enrollment. The suit alleges that Negro students in the capital get educational opportunities inferior to those in outlying suburbs in Virginia and Maryland — largely populated by whites.

One remedy seen likely to be sought: a merger of city and suburban schools.

Judge Wright, in a lecture in February, 1965 expressed this view:

"It is inconceivable that the Supreme Court will long sit idly by watching Negro children crowded into inferior slum schools while the whites flee to the suburbs to place their children in vastly superior, predominantly white schools."

(March of News continued on p. 10)

EXHIBIT "F"

INTERPRETIVE REPORT

D.C.'s School Bias Suit Has National Import

By JOHN STACKS
Star Staff Writer

The suit being heard here charging the District school system with discriminating against Negroes could have results that would affect schools across the nation.

Trial of the suit went into its fifth day today.

At issue is so-called de facto segregation which, as a result of housing patterns, keeps Negro and white children separate in the schools despite the absence of legislated or intentional racial discrimination by school officials. Negroes constitute about 90 percent of the District's school population.

Although not the first suit attacking de facto segregation, the litigation brought by militant civil rights leader Julius W. Hobson is the first in a major city outside the South. And because of the unique political character and racial composition of the District, it is the most complicated.

The point of the legal effort by Hobson is not only to seek relief from the alleged racial discrimination in Washington schools, but to help establish a legal precedent that would form the basis for similar actions in other cities.

The suit in U.S. District Court contends that de facto discrimination is just as unconstitutional as the type of segregation struck down by the Supreme Court in its famous 1954 ruling.

In order to support their contention, Hobson's attorneys have spent the week building a trial record jammed with documents and statistics which they hope U.S. Circuit Court of Appeals Judge J. Skelly Wright will use to support a ruling in their favor.

They are also introducing testimony to demonstrate that Negro children from low-income families clearly suffer from the absence of children from other racial and economic groups in their classrooms.

So far, the argument that de facto segregation is unconstitutional has not been firmly accepted by the nation's highest courts. But many lawyers and jurists have argued that it should be. Among them has been Judge Wright.

In a lecture delivered at the New York University School of Law in Feb., 1963, he said:

"It is inconceivable that the Supreme Court will long sit idly by watching Negro chil-

dren crowded into inferior slum schools while white parents flee to the suburbs to place their children in vastly superior, predominantly white schools.

"Before the Supreme Court acts, some other federal courts no doubt will take a harder look at de facto segregation and will be less inclined to accept the suggestion that the state and its agencies are not, in some degree at least, responsible for it and helpless to correct it."

If the court here accepts the arguments advanced on behalf of Hobson, the complicated question of granting relief follows. In a city with a growing preponderance of Negro students, a city governed and controlled by Congress with only a tenuous hold on its remaining white students, there are no simple solutions.

But Wright, in the same New York lecture, discussed some possible courses of action.

He said that "initially, public school authorities must be cured of the neighborhood school syndrome . . . 20th-century education is not necessarily geared to the neighborhood schools. In fact, the trend is in the opposite direction."

In the argument over de facto segregation, the question of numbers is always raised and the proper proportion of whites to Negroes is always debated. Wright had this to say:

"What may be substantial imbalance in Boston where the Negro school population is relatively small, may not be in Washington where the Negro school population is approaching 90 percent. Numbers

alone do not provide the answer. The relevant population area is an important consideration. Is the relevant area the city alone, or the suburbs as well?"

Hobson's lawyers have been giving heavy attention to the school systems in the suburbs and this week subpoenaed five suburban superintendents to testify. Wright has consistently overruled the District's objections that comparisons between the city schools and the suburbs are irrelevant to the case.

There are growing signs that the plaintiffs may be seeking some combination of the area school systems. Some lawyers, however, believe the court has no power to cross the state lines in this case, but others feel the court has the power to set that precedent.

Regardless of the city-suburbs issue, the court could order changes in the District's system itself, with the aim of changing racial patterns in the schools.

The track system has been held up by Hobson as a means of discriminating against Negro children, and the suit seeks its abolition.

Testimony this week showed that school buildings themselves are unequal in rich and poor neighborhoods and that there are still schools with all-white or all-Negro faculties. The suit seeks changes in these situations.

The drawing of school boundaries, the suit alleges, continues segregated patterns. Hobson's group hopes to force a redrawing of the neighborhood school lines.

Changes in these and other practices will help end de facto segregation in the District, Hobson's attorneys say.

EXHIBIT "G"

22174

CONGRESSIONAL RECORD — SENATE

September 20, 1966

Cigarette advertising has given smokers the "impression that just because a cigarette is filtered, then it is helpful in cutting down tar and nicotine. This is simply not true," the doctor added.

The study showed that Pall Mall filter tip cigarettes passed through more tar and nicotine than Pall Mall regulars.

For the filter tips, the smoke contained 43.3 milligrams of tar and 2.13 milligrams of nicotine for each cigarette. These unfiltered Pall Malls passed 32.7 milligrams of tar and 1.75 milligrams of nicotine. A milligram is .00003 of an ounce.

Dr. Moore said, "The reason for this is that the Pall Mall filter tip cigarette is a longer cigarette than the plain, thereby allowing the smoker to smoke more tobacco, and it apparently has a poor filter."

Although the filter tip and regular cigarettes have the same length of tobacco, the smoker tends to smoke more of the available tobacco in the filter cigarettes, he said.

A similar situation was found with Chesterfields, where the filter tip cigarette passed 27.6 milligrams of tar and 1.72 milligrams of nicotine and the regular passed 27 milligrams of tar and 1.18 milligrams of nicotine.

In addition, it was found that Lucky Strike filters allowed 27.3 milligrams of tar to pass through, while regular Lucky Strikes passed 27.3 milligrams of tar. However, Lucky Strike filters allowed 1.34 milligrams of nicotine to pass through, while the regulars passed through 1.42 milligrams.

Of the nine brands tested, True filter cigarettes were found to be most effective in screening out harmful substances. Smoke from one True cigarette contained 16.9 milligrams of tar and .79 milligrams of nicotine.

The other brands tested, in the order of the effectiveness of their filters, were Kent, Marlboro, Winston, Lark, Salem and Lucky Strike.

The tests were made by a "smoking machine," which automatically puffed once a minute with the same amount of pressure until each cigarette had reached the average length at which smokers usually discard them—slightly less than an inch. With extra-long filter tips, the throw-away length was about one inch.

Tar and nicotine were gathered by a Cambridge filter fitted into a holder behind each cigarette. This filter, commonly used by tobacco companies in their own studies, removes all visible particles from the smoke.

After removal from the smoking machine, each filter was weighed to determine the amount of tar collected. Nicotine content was determined by boiling the filter, collecting the condensate and analyzing it for nicotine content by ultraviolet light.

Dr. Moore declared that "the tobacco industry apparently realized that the public wants safer cigarettes." He noted that the production of filter tip cigarettes rose from 2 per cent of the total cigarette output in 1952 to 64.7 per cent in 1965.

Reaction to the study from cigarette manufacturers varied from pleasure to "no comment" to "our studies show differently."

P. Lorillard Company, makers of Kent and True, said it was "delighted" to learn that its brands had received "such a favorable report."

Philip Morris, makers of Marlboro, and R. J. Reynolds, makers of Winston and Salem, had no comment on the study. Liggett & Myers, makers of Lark and Chesterfield, said no one was available yesterday who could comment.

The American Tobacco Company, which manufactures Pall Mall and Lucky Strike, said that according to company studies, its filters cut down on tar and nicotine passing into the smoke.

"The effectiveness of the filter can be seen only when you compare the amount of tobacco and nicotine per inch of tobacco smoked of a filter and unfiltered cigarette," a spokesman explained.

American also noted that True cigarettes were listed as most effective but that "they have not used our brand of Carlton cigarettes. Our tar and nicotine numbers, printed on the package itself, are much lower than on True filter cigarettes."

F.T.C. STUDY URGED

WASHINGTON, August 29 (AP).—Senator WARREN G. MAGNUSON, chairman of the Senate Commerce Committee, urged the Federal Trade Commission today to investigate the report that certain filter cigarettes allowed more tar and nicotine to pass through than the same brands' nonfilter cigarettes.

The Washington Democrat has introduced legislation to require cigarette packages and advertisements to state tar and nicotine contents.

Findings of the tests on cigarette filters

Following are the findings of the Roswell Park study of filter tip cigarettes. The list runs from the least of the most effective filter. All figures are in milligrams:

Brand	Tar	Nicotine
Pall Mall filters.....	43.3	2.13
Pall Mall regulars.....	32.7	1.75
Chesterfield filters.....	27.6	1.72
Chesterfield regulars.....	27.0	1.18
Lucky Strike filters.....	27.3	1.34
Lucky Strike regulars.....	27.3	1.42
Salem filters.....	23.6	1.43
Lark filters.....	23.1	1.26
Winston filters.....	22.0	1.82
Marlboro filters.....	22.4	1.24
Kent filters.....	18.8	1.10
True filters.....	16.9	0.79

FEDERAL CONTROL OF SCHOOLS

Mr. ROBERTSON. Mr. President, yesterday a civil rights bill which contained a housing provision that was not acceptable to any section of the Nation was dropped, but only for the remainder of the current session. A similar bill undoubtedly will be introduced at the beginning of the next session of Congress, and according to Representative FRODO, of New York—see page 21832 of the CONGRESSIONAL RECORD of Thursday, September 16—it will include or be accompanied by, a far-reaching proposal of the U.S. Commissioner of Education to provide for compulsory integration through redistricting and busing metropolitan areawide public schools.

In connection with the latter bill, Representative FRODO quoted the Commissioner, Harold Howe, as saying:

If I have my way, schools will be built for the primary purpose of economic and social integration.

Mr. President, some in Virginia have called me a reactionary, because I have refused to support a Federal program of aid to public schools. When I was a candidate for the State senate in 1915, two major planks in my platform were better roads and better schools because, of course, in rural areas they of necessity go together. I have been for better roads and better schools ever since. The founder of the Democratic Party, Thomas Jefferson, was the great liberal of his day and time. I have been a student of and a firm believer in the Jeffersonian principles of representative democracy. He advocated a system of public schools for Virginia, but they were to be locally controlled. When the public school system of Virginia was finally established

long after Jefferson's death, it was on the basis of local control.

In my opinion, a majority of Virginians still favor that Jeffersonian principle, but I have served in the Congress long enough to know that Federal control inevitably accompanies Federal funds. Anyone who says he favors Federal funds without Federal control is either ignorant of how the Federal Government operates in these matters or else is not intellectually honest about what is involved. In fact, Commissioner Howe has publicly stated that desegregation in public schools is but a start of his program for Federal control.

Under the proposed legislation, Federal control will cover the qualification and assignment of teachers, curricular specifications on a par with the Interstate road specifications, the elimination from acceptable textbooks of any material to which a major pressure group objects, and suburban-inner city pupil exchanges.

The pending case of Hobson against Hansen, involving de facto segregation in the public schools of the District of Columbia, illustrates the potential of Federal controls for the adjoining States of Virginia and Maryland and eventually for the entire Nation. That case involves the right of District of Columbia school authorities to cross the State lines of Virginia and Maryland to increase the percentage of white children from the adjoining States in District schools and the percentage of colored students in the adjoining metropolitan areas of Virginia and Maryland.

The impact of the adoption of that principle upon the school systems of all States is illustrated in the leading editorial of the Richmond News Leader of September 10, 1966, entitled "The Judge Has Spoken."

Mr. President, I ask unanimous consent that the editorial be printed at this point in the Record.

There being no objection, the editorial was ordered to be printed in the Record, as follows:

[From the Richmond (Va.) News Leader, Sept. 10, 1966]

THE JUDGE HAS SPOKEN

Usually when a case comes to court, the plaintiffs have some doubt about the outcome—for indeed, the very reputation of justice depends upon at least the outward appearance of objectivity upon the bench. But in the celebrated schools case of *Hobson v. Hansen*, now being argued in the Federal District Court in the District of Columbia, the appointed Judge already has committed himself publicly upon the issue under litigation; the Judge has spoken not only publicly, but spectacularly, vehemently, and precisely on the question at stake. Yet so far, the special Federal Judge, J. Skelly Wright, has not moved to disqualify himself.

Moreover if Judge Wright follows the recommendations he himself made a year and a half ago, the case will have a profound and direct effect upon the school systems of Northern Virginia and Maryland. On February 17, 1965, Judge Wright delivered the James Madison Lecture at the New York University School of Law. He spoke about legal remedies for "de facto segregation." He argued that the courts should abandon "judicial restraint," and outlaw any discrimination which might result from

the lines of historic school districts, even if it were necessary to cross the boundaries of political divisions. His lecture alluded again and again to the situation in Washington, D.C. He left it clear that there was, no way to provide "equal" education in Washington, without a court order to bring together the children of Washington and the children of the Virginia and Maryland suburbs into great, centralized "educational parks."

The unofficial speculations of Judge Wright before the NYU School of Law (since published in two law journals) suddenly took on a large significance last January when Julius W. Hobson and a group of white and Negro plaintiffs filed suit against the Washington public schools asking relief from *de facto* segregation in the system. Hobson, a civil rights militant, and his group also sought to dissolve the D.C. School Board, which, under the provisions of the D.C. Code (set by Congress), is appointed by the Federal District Court judges sitting together. The suit therefore was not only against Carl F. Hansen, the redoubtable Superintendent of Schools, but also against the School Board and the Federal District Court as well. Since Hobson therefore sought to sue the very judges who supposedly had jurisdiction in the case, the Chief Circuit Judge appointed another judge—J. Skelly Wright, who normally sits on the D.C. Court of Appeals.

The key factor in the case is that 90 per cent of the pupils in the D.C. system are Negro, and only 10 per cent are white. No matter what Superintendent Hansen were to do, he could not achieve "racial balance" in his schools. Yet since the *Brown* case of 1954, ideologues have held that all-Negro education is inherently inferior. And Hobson is beseeching the court to make the D.C. system provide "educational opportunities, advantages, and facilities . . . equal to [those] afforded and available to white children at public school age similarly situated in adjoining, adjacent, and contiguous areas of Maryland and Virginia." On the face of it, "equality" cannot be obtained without mixing students from the two States and the District.

Hobson's thesis is exactly what was propounded by Judge Wright in his lecture. "Negro children," he says, "suffer from lack of exposure to the middle class culture found in white but not in Negro schools." And again: "Thus children compelled by State compulsory attendance laws to attend the segregated Negro school are deprived of equal protection of the law. The fact that the classification to attend the school is based on geography, and not on race, does not necessarily make the school less segregated or less inferior."

Therefore he argues that school district lines may be unconstitutional no matter what the intent:

"Where the result is segregation, and therefore unequal educational opportunity, the classification used, whatever it is, is constitutionally suspect and a heavy burden is placed on the school board and the State to show, not only innocent intent, but also lack of a suitable alternative."

Judge Wright, in his lecture, specifically touched on the issue now under litigation.

"A judgment must be made in each case based upon the substantiality of the imbalance under particular circumstances. Once substantial racial imbalance is shown, however, no further proof of unequal educational opportunity is required. What may be substantial imbalance in Boston, where the Negro school population is relatively small, may not be in Washington, where the Negro population is approaching 90 per cent. Numbers alone do not provide the answer. The relevant population area is an important consideration. Is the relevant area the city alone or the suburbs as well?"

Judge Wright answers his own question:

"An even more difficult problem is presented by the flight of the white population to the suburbs. The pattern is the same all over the country. The Negro child remains within the political boundaries of the city and attends the segregated slum school in his neighborhood, while the white children attend the vastly superior white public schools in the suburbs. . . . Obviously court orders running to local officials will not reach the suburbs. Nevertheless, when political lines, rather than school district lines, shield the inequality, as shown in the reapportionment cases, courts are not helpless to act. The political thicket, having been pierced to protect the vote, can likewise be pierced to protect the education of the children."

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Finally, Judge Wright foresaw the day when District Courts, such as his, would have power to direct the educational systems of the nation:

"Undoubtedly, if and when the Supreme Court tackles the suburban vis-a-vis the city slum school problem, in the event of a decision in favor of the complainants, it will again remit the remedy to the District Courts, with instructions to ignore the State-created political lines separating the school boards and to run its orders directly against the State, as well as local officials."

Clearly, Judge Wright was an acknowledged partisan in the Hobson issue long before he was appointed to hear the case. It is difficult to see how Superintendent Hansen and his associates can get an objective hearing. Thanks to this special assignment, Judge Wright need not wait for the Supreme Court; he is in a unique position to order his own theories into effect. Virginia's Congressmen ought to be protesting vociferously against this Judge who has already judged.

FREE SPEECH AT BERKELEY

Mr. DODD. Mr. President, for some time we have been faced with headlines from the University of California at Berkeley concerning what at one time was a free speech movement, which later became an anti-Vietnam war movement, and which has involved stopping troop trains on their way to the Oakland Army Terminal, and an attempt at physically taking over the university.

Month after month has been filled with such new items as a student sit-in at the university administration building, a demonstration against the appearance at Berkeley of U.S. Ambassador to the United Nations Arthur Goldberg, the growing use of various kinds of narcotics and drugs, and the general degradation of the academic atmosphere at this great American university.

Instead of advancing freedom at the University of California, student and faculty activists have, in reality, eliminated the entire atmosphere of free and open discussion and debate. This is the conclusion of Prof. Lewis S. Feuer who, after 9 years of teaching philosophy and social science at Berkeley, has left to become professor of sociology at the University of Toronto.

What has happened to the concept of free speech at Berkeley? In this month's Atlantic Monthly Professor Feuer provides an answer:

Freedom of discussion presupposes that the chief sides in any national debate will be represented. In Berkeley, the supporters of President Johnson's foreign policy are, in effect, denied a forum on the Berkeley campus. The New Left has made it nearly impossible for the national Administration's standpoint to be presented to Berkeley students. This was the effect of the last genuine debate which took place in Berkeley in May, 1965, at which Professor Robert Scalapino and William Bundy defended the Administration's policy in Vietnam against two critics. Although the critics were listened to courteously by Administration supporters, Scalapino and Bundy were almost shouted down. Some activist leaders have defended the one-sidedness of the "free discussion." The time, they say, for equal discussion of all sides is over; now is the time for action, and discussion should be confined at Berkeley to alternative ways of stopping the war machine.

Professor Feuer concludes:

The freedom of speech which emerged in Berkeley this past year was unilateral, a freedom for the new left which the latter was prepared to deny to others.

Among those he holds most responsible for this are the professors and teaching assistants who participated with those who sought to create such an atmosphere at the university:

When teachers abandon their responsibilities, they become false teachers and sow confusion in their students' lives. Freedom of speech, freedom of debate have never been at a lower estate in any major American university in the last generation.

A total breakdown in morals has resulted. According to police reports, almost half the persons arrested in Berkeley during 1965 were students. In a 5-year period, burglaries increased from 147 to 1,164, and thefts from 305 to 604. The city of Berkeley had an 11-percent increase in crime, while the campus area saw an increase of 39 percent. According to Professor Feuer a "cult of dishonesty" has been growing at Berkeley, and it has been both intellectual and physical.

Professor Feuer quotes Bernard Shaw's statement:

The most tragic thing in the world is a man of genius who is not also a man of character.

He notes that this "In a sense has been the tragedy of Berkeley" and he warns that it may become the larger tragedy of our society. He concludes with this eloquent warning:

The problem of Berkeley is the problem of the American intellectual class. As it grows in power and numbers, wooed alike by the government, foundations, the publishing world, industry, and the universities, it demands for itself the privileges and prerogatives of a third chamber of government. It demands that government officials be especially accountable to it as the guardians of intellect and knowledge. Yet it has scarcely shown itself to possess the character which its pretensions would require.

The twentieth century has shown how the intellectual class can become a primary force for an assault on democratic institutions, and we may yet witness this phenomenon in America disguised under such slogans as participatory democracy.

September 21, 1966

CONGRESSIONAL RECORD — APPENDIX

A4899

ants and thus jeopardizing the possibility of a fair verdict.

What is at stake is the educational freedom now enjoyed in the suburbs around Washington. This Judge suggested in a New York speech months ago that, in order to wipe out the racial imbalance in the District of Columbia where the school population is 90 percent Negro, children from the outlying white areas be transported into the city and the Negro pupils in Washington taken in turn by bus into the suburbs.

This is a monstrous suggestion, one that is in line with the aims of the civil rights militants who are now, by legal suit, seeking to overthrow the District of Columbia school system, as well as the free school systems of Virginia and Maryland.

The matter at issue is dangerous, for if decided as this Judge openly has revealed he thinks, it would force new educational problems on both Virginia and Maryland and take away from them their already reduced rights as individual States. The Judge obviously should disqualify himself immediately.

Following is the editorial warning of the situation at hand:

Usually when a case comes to court, the plaintiffs have some doubt about the outcome—for indeed, the very reputation of justice depends upon at least the outward appearance of objectivity upon the bench. But in the celebrated schools case of *Hobson v. Hansen*, now being argued in the Federal District Court in the District of Columbia, the appointed Judge already has committed himself publicly upon the issue under litigation; the Judge has spoken not only publicly, but spectacularly, vehemently, and precisely on the question at stake. Yet so far, the special Federal Judge J. Skelly Wright, has not moved to disqualify himself.

Moreover if Judge Wright follows the recommendations he himself made a year and a half ago, the case will have a profound and direct effect upon the school systems of Northern Virginia and Maryland. On February 17, 1963, Judge Wright delivered the James Madison Lecture at the New York University School of Law. He spoke about legal remedies for "de facto segregation." He argued that the courts should abandon "judicial restraint," and outlaw any discrimination which might result from the lines of historic school districts, even if it were necessary to cross the boundaries of political divisions. His lecture alluded again and again to the situation in Washington, D.C. He left it clear that there was no way to provide "equal" education in Washington, without a court order to bring together the children of Washington and the children of the Virginia and Maryland suburbs into great, centralized "educational parks."

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Finally, Judge Wright foresaw the day

The Judge Should Disqualify Himself

EXTENSION OF REMARKS

OF

HON. WILLIAM M. TUCK

OF VIRGINIA

IN THE HOUSE OF REPRESENTATIVES

Tuesday, August 30, 1966

Mr. TUCK. Mr. Speaker, under unanimous consent I include in the Appendix of the Record an editorial entitled "The Judge Has Spoken," that appeared in the September 10 issue of the *Richmond News Leader*, which I consider one of the outstanding afternoon dailies in the Nation and which is published in our Virginia capital.

This particular editorial calls attention to a travesty of American justice, a case in which a judge is presiding over a court that has at issue a matter on which he has spoken out publicly, expressing the viewpoint of the complain-

Richmond Times-Dispatch

DAVID TENNANT BRYAN, *Chairman and Publisher*
 ALAN S. DONNAHOE, *President and Associate Publisher*
 VIRGINIUS DABNEY, *Editor* JOHN E. LEARD, *Managing Editor*

Wednesday, July 27, 1968

Merge Virginia Schools With Schools in D. C.?

Are most Virginians aware of the situation which may soon confront the public schools in the counties of Arlington and Fairfax and the city of Alexandria?

Incredible as it must seem, it is altogether possible that the federal courts will rule that these three political subdivisions, and the Maryland counties of Montgomery and Prince Georges (see accompanying map), will have to merge their school systems with the overwhelmingly Negro schools of the District of Columbia.

A suit to force this merger is being argued right now in the United States District Court in Washington, with JUDGE J. SKELLY WRIGHT presiding. This same JUDGE WRIGHT, formerly of New Orleans, said in a speech last year in New York City:

It is inconceivable that the Supreme Court will long sit idly by watching Negro children crowded into inferior slum schools while the whites flee to the suburbs to place their children in vastly superior, predominantly

is being attempted in the case now being argued. Furthermore, when it is recalled that this particular Supreme Court has managed to do all kinds of things which many leading constitutional authorities regard as totally contrary to the organic law, the part of prudence is for us to take account of this possibility.

The largest percentage of Negroes in the public schools of any of the three Virginia political jurisdictions is Alexandria's 13 per cent, with Arlington County having 8 per cent and Fairfax County 3.

It is now suggested, in all seriousness, that the way to remedy the District's ills, with its 90 per cent Negro school population, is to bus thousands of these pupils into the surrounding suburban areas. Construction of schools near the boundaries of the District, and the adjacent states, so as to promote total integration, also is part of the scheme.

Aside from the illegality of what is being proposed, there is its illogicality. If there is some-

white schools.

JUDGE WRIGHT didn't indicate how the Supreme Court might be able to torture the statutes and the Constitution to make possible a judicial ordering of schools in two separate states and the District of Columbia to merge. But that's exactly what

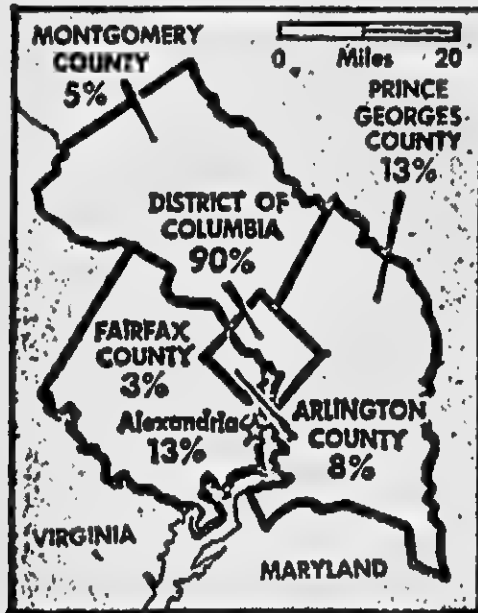
thing wrong with the schools in the District — and obviously plenty is wrong—the way to remedy this is to provide better schools and better teachers for the pupils there.

Unless there is something inherently inferior about Negro school children—and this is regularly and vehemently denied—there is nothing to prevent the schools of the District from reaching the same level of excellence as those elsewhere. All that is needed is adequate planning, both fiscal and educational, and adequate appropriations.

But no matter how absurd and outrageous the proposal may seem to persons in the affected areas, the plan may be approved by the courts.

Such a ruling would immediately precipitate a crisis in both Virginia and Maryland. Furthermore, it would lead to the filing of suits by Negroes in many other cities, designed to force similar consolidations of urban and suburban schools.

So this case now being argued has vast potentialities. It deserves the most careful watching.



—National Observer

Area involved in integration suit, with percentages of Negro enrollment, is shown above.

[Exhibit "F"]

MEMORANDUM OF POINTS AND AUTHORITIES IN
SUPPORT OF MOTION OF DEFENDANTS HANSEN,
HEWLETT, HAMILTON, SMUCK, STELL, STULTS,
AND YOCHELSON FOR VOLUNTARY DISPLACE-
MENT

I.

Introduction

At the outset, the above named defendants wish to make clear that the present motion is not filed as an affidavit of bias or prejudice against the Court, nor is it intended to be a substitute for such affidavit. To the best knowledge of counsel, at no time in the history of the Office of the Corporation Counsel, D.C., has it been necessary to file a formal affidavit of bias. Undoubtedly, this record results directly from the tradition of impartiality and objectivity which the Office of the Corporation Counsel has consistently experienced in its appearances before the judiciary of the District of Columbia as well as from the practice of individual judges to voluntarily remove themselves from participation in lawsuits not only when circumstances were present supporting only the barest imputation of impartiality, but also when the Court discovered, however factually unfounded, the slightest appearance of predisposition by the Court for one litigant over another.

Mr. Justice Frankfurter has enunciated the principal succinctly in the case of Offutt v. United States, 348 U.S. 11, 14, and although the fact situation in that case has no parallel here, Justice Frankfurter's observation is especially pertinent. In his consideration of the ingredients that constitute justice, he concludes:

"* * * Therefore, justice must satisfy the appearance of justice."

The concern of the judiciary about its reputation for fairness and objectivity is represented in the following quotations:

"It is vital that justice be administered not only with a balance that is clear and true but also with such eminently fair procedures that the litigants and the public will always have confidence that it is being so administered. To that end judges must refrain from engaging in any conduct which may be hurtful to the judicial system or from sitting in any causes where their objectivity and impartiality may fairly be brought into question." State v. Deutsch, 168 A. 2d 12, 20.

"The proper administration of justice, and respect for the courts, depend not only upon the intrinsic integrity, fairness and impartiality of the judges, but upon their reputation therefor in the communities in which they serve." State ex rel. Bennett v. Childers, 105 P 2d 762.

It is the thrust of this motion, not that these defendants formally challenge the propriety of the Court to sit in judgment of this case, but rather that the Court, in light of all the surrounding circumstances, ought carefully to examine itself to insure that it is capable of dispassionate adjudication of the important issues embraced in the present controversy.

II.

Public remarks of this Court relating to the issues of this case.

Because of the fact that its school population is presently 93 per cent Negro, the District of Columbia Public School System is unique in the Nation. It is obvious from this situation alone that some schools will be and are, in fact, composed entirely of Negro children. For example, in the District's elementary school division 28 schools accommodate Negro children only.

On February 17, 1965, this Court, when it delivered the James Madison Lecture at the New York University School of Law, had occasion to make public its

views on some of the legal ramifications of de facto segregation. That speech concerned itself not only with the legal implication of de facto segregation, but also with this Court's expressions concerning remedies for de facto segregation. In fact, the lecture was entitled "Public School Desegregation: Legal Remedies for De Facto Segregation". The lecture, Exhibit , is pertinent in its entirety to the question of prejudgment by this Court which, by this motion, the Court is asked to consider. However, it is well to excerpt some of the more crucial passages that suggest to counsel for these defendants the probability that this Court is unable to hear the issues involved in the case with the objectivity to which a party to a suit is entitled in a court of law:

On the burden of proof in de facto segregation cases:

"In short, where racial segregation results from state action, the officials responsible therefor must show, not that their action was only rationally related to a legitimate state purpose, but that there is no way reasonable to accomplish that purpose absent racial segregation. * * *"

On the propriety of the neighborhood school concept and the theory of educational parks:

"Assuming the constitutional question is answered affirmatively in favor of the Negro, the question of appropriate remedy arises. What can a state do — what can a court require a state to do — to relieve racial imbalance? In short, what, if any, remedies are available?

"Initially, public school authorities must be cured of the neighborhood school syndrome. The neighborhood school, like the little red school house, has many emotional ties and practical advantages. The neighborhood school serves as the neighborhood center, easily accessible, where children can gather to play on

holidays and parents' clubs can meet at any time. But twentieth century education is not necessarily geared to the neighborhood school. In fact, the trend is definitely in the opposite direction. Educational parks, each consisting of a complex of schools, science buildings, libraries, gymnasiums, auditoriums and playing fields, are beginning to replace the neighborhood school. Although the development of the educational park idea in education is unrelated to the question of racial segregation, its use in relieving racial imbalance in public schools is obvious. Instead of having neighborhood schools scattered through racially homogeneous residential areas, children of all races may be brought together in the educational parks."

On the expansion of Metropolitan schools districts to include the suburbs:

"White a court, in proposing or approving a plan of desegregation, may find no great difficulty in ordering the local school authorities to use the Princeton Plan, or one of its variants, or, under the authority of Griffin v. School Board of Prince Edward County, supra, Note 29, in ordering the local taxing authority or the state to levy taxes to raise funds to build an educational park, relieving the inequality between the suburban public school and the segregated city slum public school presents a greater challenge. Obviously, court orders running to local civic officials will not reach the suburbs. Nevertheless, when political lines, rather than school district lines, shield the inequality, as shown in the reapportionment cases, courts are no helpless to act. The political thicket, having been pierced to protect the vote, can likewise be pierced to protect

the vote, can likewise be pierced to protect the education of children"

On the issue of whether an all Negro school is essentially an inferior school:

"A racially segregated Negro school is an inferior school. It is 'inherently unequal.' Brown v. Board of Education. No honest person would even suggest, for example, that the segregated slum school provided educational opportunity equal to that provided by the white suburban public school. Thus children compelled by state compulsory attendance laws to attend the segregated Negro school are deprived of equal protection of the law. The fact that the classification to attend the school is based on geography, and not on race, does not necessarily make the school less segregated or less inferior. Nor does it make the classification less illegal unless it can be shown that no reasonable classification will alleviate the inequality."

And again:

"Experience with segregated Negro schools, in the North as well as the South, confirms the public impression that Negro schools, in addition to being per se inferior, are usually demonstrably inferior in fact. Surveys of school systems throughout the country demonstrate time and again that the Negro school, as compared to its white counterpart, is overcrowded and understaffed—usually with inferior teachers. The experienced teachers with a choice of assignment avoid the Negro school. The Negro school buildings themselves are often run down and ill kept. The amount spent to educate the Negro child is, in many cases, substantially less than that spent on the white.

"In addition to these overt differences, Negro children in Negro schools suffer from lack of exposure to the middle class culture found in white but not in Negro schools. Shunted off in the slum school, the Negro child is

denied the stimulation of competition and association with children of other races and cultures. In sum, whenever a substantial number of Negro children attend public schools in a given area, it appears that the Negro children usually find themselves in schools populated primarily by other Negro children and that these Negro schools somehow usually seem to receive less attention from the school board in terms of money, teachers, books and building care.

"Thus in most of the school cases arising from the metropolitan areas, it should not be necessary to reach the issue of whether adventitious de facto segregation, with more is unconstitutional. * * *"

On the determination that de facto segregation, where compulsory school attendance laws are in effect, is really de jure segregation.

"Where a forthright effort is made to determine the cause of racial imbalance, the probability of finding state action in segregated Negro schools, in some degree at least, is increased immeasurably. Discrimination in job opportunities, housing and other necessities drives Negroes into the segregated slums, and application of the neighborhood school policy seals their children in the slum school which these children are compelled by law to attend. Theoretically, the state's compulsory attendance laws may be satisfied by admission to an accredited private school. Some white children, of course, do attend private schools. But to the Negro child the compulsory attendance law often means only one thing: he must attend the segregated slum school in his neighborhood. This fact alone, the legal compulsion to attend the segregated school, should be sufficient state action to bring all de facto segregation within the rule of Brown.

"State action is also obvious in the use of school boundaries which inevitably result in a segregated Negro school. When school authorities consciously use school district lines, knowing the result will be a segregated Negro school, the action and the intention of the state are clear. Again the compulsory attendance law, superimposed on the school boundary, provides segregation compelled by law within the rule of Brown."

References to the transcript of proceedings herein demonstrate that the issues concerning which the court has spoken are issues that are vital in the determination of this lawsuit.

III

Action of the Court suggestive of prejudgment

On September 14, 1966, these defendants argued before the Court their motion for a continuance of this case until October 5, 1966. In the course of the colloquy between the Court and counsel for these defendants, reflected in Exhibit , the following language is found with respect to the submission by these defendants of a motion for judgment in their favor to be filed at the close of the plaintiffs' case:

* * * * *

"MR. CASHMAN: Then, Your Honor, as I say, could we say this: that our requirement to argue the motion for judgment be set over to the 4th of October so that — and it is dependent, of course, upon obtaining Doctor Coleman on the third. That is the only date we are going to have, to have him.

"THE COURT: Mr. Cashman, I want to get on with taking your testimony in this case. I realize you want to file a motion for judgment at the close of plaintiffs' case, as you have a right to do, but I don't think it is necessary, really, to have your case, or the beginning of your case contingent on this motion.

"The motion, of course, will attack the plaintiffs' case rather broadly, but realistically the motion can hardly be successful as to all aspects of the case at this stage and, consequently, I think you ought to be, as you have promised, reach to move ahead with your witnesses on the 5th of October, and not stand on a technical position that you don't want to proceed with your side of the case until this testimony from this witness, who is now apparently in Europe, is obtained.

"I think the Court has tried to cooperate with reference to the trial of this case, and I think it is about time that there be some cooperation coming from the other direction, and it seems to me that this is an area where there can be some cooperation, and I don't think that you should stand on the technical position that you don't want to go ahead with your case until Doctor Coleman's testimony is taken.

"MR. CASHMAN: Well, Your Honor, it may be technical, but we do believe it is very real.

"Your Honor, when we talk about this motion for judgment I am not referring to a frivolity that we are going to offer this Court. We think we can meet — and we seriously think we can meet all the contentions of the plaintiffs thus far on our motion for judgment.

"Now, I know the Court is going to be the ultimate arbiter of that issue, but, Your Honor, since we do believe that and we are in dead earnest that we do, we think that it ought not be required of us, as it is not by the rules, until the whole case is in. Otherwise, Your Honor, the filing of such a motion is open-ended and it doesn't serve any logical purpose, it doesn't help the defendants, and while it might be technical, Your Honor, I offer the Court very sincerely that it is very real, and it is not a technicality."

It is the view of counsel for the defendants that the above dialogue between the Court and counsel furnishes a clear example of the probability that their clients will not receive impartial consideration in this case. Accordingly, they are genuinely concerned by the fact that this Court has announced its ruling on the sufficiency of defendants' motion for judgment prior to the time of its submission and wholly without any consideration of what it may contain. The doubts of counsel for these defendants that their clients will receive an objective hearing before the Court is heightened, not only by the foregoing commentary standing alone, but also by virtue of all the surrounding circumstances indicative of a likelihood that the Court, albeit unconsciously, may not be the impartial tribunal to which these defendants are entitled.

CONCLUSION

WHEREFORE, upon the premises stated, defendants submit that this Court should examine itself concerning whether it can actually give to these defendants a fair hearing or whether, in the light of all the surrounding circumstances, the Court's further participation in the case gives the appearance that

these defendants cannot receive a fair hearing and, in either event, whether it should not voluntarily remove itself from any further hearing of the case.

/s/ Milton D. Korman
Acting Corporation Counsel,
D.C.

/s/ John A. Earnest
Assistant Corporation
Counsel, D.C.

/s/ Matthew J. Mullaney
Assistant Corporation
Counsel, D.C.

/s/ James M. Cashman
Assistant Corporation
Counsel, D.C.

Attorneys for Defendants
Hansen, Hewlett, Hamilton,
Smuck, Steel, Stults, and
Yochelson.

[Filed December 2, 1966]

OBJECTION OF DEFENDANTS TO THE
ORDER OF THE COURT

Defendants hereby object to the Court's Order of November 15, 1966, amending its prior Order filed November 8, 1966, by which Exhibit "A-3", a report of the Task Force on Antipoverty in the District of Columbia, Committee on Education and Labor, House of Representatives, is admitted into evidence and Exhibit "A-2", Hearings before the Task Force on Antipoverty in the District of Columbia of the Committee on Education and Labor, House of Representatives, Eighty-Ninth Congress, is excluded except as it may be used to contest any portion of "A-3". The reasons for the objection of defendants are as follows:

1. The report of the Task Force is clearly inadmissible under elementary principles of evidence. Hearsay testimony not subject to an exception has no status as evidence and is routinely excluded by the courts. The essential defect in such testimony is that it never encounters the test of cross-examination, and therefore is not subjected to its safeguards. The hearings before the Task Force, plaintiffs' Exhibit "A-2", is a classic example of a hearing conspicuously characterized by opinions, conclusions, hypotheses and speculations contained in the statements of the witnesses who appeared before it. Even more significantly, the generalizations made before the Task Force were seldom exposed to meaningful cross-examination or any judicial safeguard by its members. As was demonstrated in defendants' memorandum concerning the admissibility of certain documents offered in evidence by plaintiffs, Wigmore recognized the principle in the following language:

"In general the principle is clearly accepted that the testimony taken before a tribunal or officer not empowered to compel or not in practice employing cross-examination as a part of its procedure is inadmissible; * * * "
(Wigmore on Evidence, 3rd ed., 1940) § 1373.

The only legal authority that apparently permits the reception of an official report of a legislative committee into evidence at a judicial trial, either as an exception to the hearsay rule, or under the theory of judicial notice, is to be found in Stasiukevich v. Nicolls, 168 F.2d 474 (C.A. I 1948). That case, which is solitary authority for the reception by the Court of such evidence, has not been followed in its own jurisdiction since it was decided. Even in that case, the remarks of the Court were obiter dicta because the court below was not specific as to the content of the report upon which it relied, and the case, therefore, sent back for retrial.

Nor does the Stasiukevich decision unqualifiedly allow the reception of a report of the committee as evidence in a judicial proceeding. The contrary is true, as manifest in the statement of Judge Magruder that:

"* * * But though the court may receive the report in evidence, or may take judicial notice of its existence and contents, this does not mean that the court must accept the findings in the report as indisputable truth; the findings are merely evidence of the facts asserted." (188 F.2d at 479)

The opinion contends a further cogent caveat against admission when its writer observes:

"The credibility of such evidence will vary according to the thoroughness and impartiality with which the committee conducted its investigation, the fairness of its procedure, the fullness of opportunity it afforded accused individuals or organizations to develop their side of the story; and, of course, the other party may introduce evidence tending to prove the contrary of the facts asserted in the official report." (168 F.2d at 479)

2. The standard of impartiality, enunciated in Stasiukevich, while strictly applicable to the weight to be

given to the report, strongly suggest that the report of the Task Force should not even be received in evidence, because, in truth, the report is completely lacking in impartiality. The frontispiece of the Task Force report, Exhibit "A-3", represents that Congressman Adam Clayton Powell (D. - N.Y.) is the chairman of the Committee on Education and Labor, United States House of Representatives. The report indicates on page II that the Task Force on Antipoverty in the District of Columbia was composed of Representative Roman C. Pucinski, Illinois, Chairman, Augustus F. Hawkins, California, and Edward J. Gurney, Florida, members. The preface to the report signed by Chairman Powell states what are clearly his private opinions. It could even be argued that the reason for the investigation was to substantiate or apparently substantiate them.

3. Further, defendants' Exhibit "1", "2" and "3" attached hereto, incorporated herein, and by reference made a part hereof, demonstrate the close relationship between Congressman Powell and Julius Hobson, the local leader of the District's chapter of ACT, and the principal plaintiff in this lawsuit. Exhibit "2", attached, a newspaper article of October 10, 1965, appearing in the Sunday Star, points out that Representative Powell credited complaints brought by the League for Universal Justice and Good Will against the school system with his decision to create the Task Force on Antipoverty in the District of Columbia. The article highlights the warm support Representative Powell extends not only to the league, but to its brother organization, ACT. Correspondingly, the report itself on page 3 acknowledges the Task Force's gratitude for the League's invaluable assistance". Exhibit "C", a newspaper article dated April 19, 1964, appearing the Sunday Star, reveals an even closer relationship between Adam Clayton Powell and ACT in that it appears he is an official consultant to that organization.

4. Still another indication of the partiality of the report of the Pucinski Committee is the statement

of Representative Edward J. Gurney, a member of the Task Force, appearing in the Congressional Record of June 20, 1966, page 13051, Exhibit "4" attached hereto, incorporated herein, and by reference made a part hereof. Mr. Gurney declared:

"Mr. Speaker, on Friday morning, June 17, there was released a committee print entitled "A Task Force Study of the Public School System in the District of Columbia as It Relates to the War on Poverty." The report further states that this study was conducted by the Task Force on Antipoverty in the District of Columbia of the Committee on Education and Labor.

"Mr. Speaker, I am a member of that task force, and the first time I saw that report was Friday morning. I was not afforded an opportunity to participate in the drafting of the report; I was not informed that it was about to be published. The report was not discussed at a meeting of the subcommittee called for that purpose.

"Furthermore the minority staff of the committee was not notified, nor were they given an opportunity to even read the report before it was released. No provision was made for the preparation of minority views or additional comment.

"In short, that report is not the work of any task force in which I participated, although it purports itself to be such. I wish at this time to disassociate myself from that report and to make it very clear that I had no part in determining its contents."

The repudiation of the report by one of the supposed members of the Task Force should alert the unwary against reliance on its contents and disqualify that report as credible evidence in a judicial proceeding. The remarks of Congressman Gurney, taken together with

the support of Mr. Hobson by the Chairman of the House Committee on Education and Labor and his announced sympathy with the goals of ACT, should preclude the placement of any belief in the contents of a report as obviously impartial as the Task Force report, Plaintiffs' Exhibit "A-3".

5. Even if Stasiukevich were sufficient authority for the admission of the report in question (ignoring for the moment the circumstances surrounding the report that call for its disqualification), the weight to be attached by the trier of fact to such evidence becomes paramount. On the basis of the very first criterion of credibility announced in Stasiukevich, this report fails. The lack of impartiality brought to the conduct of the investigating of the District of Columbia public school system is revealed by the fact that one member of the Task Force was denied the right to see that report until its formal publication.

6. Another reason why the Court should not permit the report to be received into evidence or rely upon it in any way is simply that the Court has had before it almost all the key witnesses who appeared before the Task Force with the advantage of assessing their testimony under the regularity of court procedures and the scrutiny of cross-examination. These witnesses were Dr. Elias Blake, Jr., Dr. Marvin G. Cline, Dr. Carl F. Hansen, Dr. Joseph Carroll, Granville Woodson, Julius W. Hobson, Jr., Dr. Euphemia Haynes and Commissioner Walter N. Tobriner, all of whom appeared in person in court and, therefore, whose views should have been fully aired at the trial.

7. The Order of Court excluding plaintiffs' Exhibit "A-2", the Task Force Hearings, except in so far as it may be used to attack, plaintiffs' Exhibit "A-3", admitted into evidence, prejudices defendants by imposing an impossible and unnecessary burden upon them. Plaintiffs are required to prove the allegations they assert in the complaint. That opportunity was fully afforded them by this Court in the

lengthy trial proceedings over which it presided.

Plaintiffs put on their evidence; defendants were then put onto their proof; and plaintiffs offered evidence in rebuttal. This Court has before it an ample trial record for making its decision without reference to another forum, the Task Force proceedings. It is erroneous and improper to require, as does the Order of November 15, 1966, that defendants contest a hundred page report of a congressional Task Force by extracting from the hearings made before that body, evidence defendants contend does not support its conclusions. The Order amounts to a new proceeding wherein defendants must deal with a record not of their own making, a record now dead, in a forum that has none of the procedural and evidentiary safeguards inherent in the conduct of a trial. This Court is required to base its decision on the issues raised in this case from a review of the testimony and evidence actually submitted to it by the parties litigant. Otherwise, the need for a trial is obviated.

Conclusion

Wherefore the premises above considered, defendants urge the Court to rescind its Order of November 15, 1966, and direct that plaintiffs' Exhibit "A-2", the hearings before the Task Force on Antipoverty in the District of Columbia, and plaintiffs' Exhibit "A-3", the report of that Task Force, be excluded from evidence in this case.

/s/ Charles T. Duncan
Corporation Counsel, D.C.

/s/ John A. Earnest
Assistant Corporation
Counsel, D.C.

/s/ James M. Cashman
Assistant Corporation
Counsel, D.C.

/s/ Matthew J. Mullaney
Assistant Corporation
Counsel, D.C.

[Certificate of Service]

New ACT Rights Group Meeting Here Saturday

A new Nation-wide committee of militant Negro civil rights leaders will meet here Saturday.

Its members include Mrs. Gloria Richardson, chairman of the Cambridge (Mass.) Non-Violent Action Committee; Malcolm X, former Black Muslim leader; Julius Hobson of Washington, field director for the Congress of Racial Equality, ~~Representative Adam Clayton Powell, Democrat of New York~~ and Rev. Milton A. Eisenhower, who organized the New York school boycott.

Lawrence Lanary, organizer of the Chicago school boycott, will be the committee's first chairman.

Purpose Explained

The committee has taken the name ACT. The letters are not abbreviations but reflect the group's purpose, Mr. Hobson said.

The Negro leader said the committee, which has held one previous meeting in Chester, Pa., was formed to bolster local action groups in their civil rights campaigns and to support such groups when their anti-discrimination projects are attacked and "undercut by the standard civil rights organizations such as the NAACP (National Association for the Advancement of Colored People) and the Urban League."

The committee does not intend to initiate plans for demonstrations, Mr. Hobson said.

Attending the meeting here will be representatives of the proposed "stall-in" of cars to tie up traffic at the New York

World's Fair on April 22.

Committee leaders said they will consider whether to dispatch a team of prominent demonstrators to bolster the April 22 "stall-in," which was planned by the Brooklyn (N.Y.) chapter of CORE. The Brooklyn unit's project has been criticized by national CORE leaders.

Others On Committee

At Cambridge, Mrs. Richardson was quoted by the Associated Press as saying the committee also includes John Lewis, head of the Student Non-Violent Co-ordinating Committee with headquarters in Atlanta; Stanley Branche, head of the Committee for Freedom Now in Chester, Pa.; and John Wilson, chairman of the Student Appeal for Equality at Maryland State College, Princess Anne, Md.

Mrs. Richardson said Malcolm X is visiting in Africa and will have a representative at the meeting.

He said over 50 Negro leaders from various cities are expected to attend the day-long meeting, to be held in the Odd Fellows Hall at 1853 Ninth street N.W. He said the session will begin after a 10 a.m. press conference at the hall.

New, Militant Rights Groups Behind D.C. School Probe

By CHARLES D. PIERCE
Star Staff Writer

The two organizations whose charges of racial discrimination in District schools have touched off a preliminary inquiry by federal officials are relatively new and militant entries in the civil rights field.

They are ACT and the League for Universal Justice and Good Will. Among the things they have in common is the warm support of Rep. Adam Clayton Powell, D-N.Y.

ACT is a committee of civil rights figures from various sections of the country. The letters are not abbreviations but reflect the group's purpose.

Original Leaders Listed

Among the original members of this group were Mrs. Gloria Richardson, former chairman of the Cambridge (Md.) Non-Violent Action Committee; Julius Hobson, a former president of the Washington chapter of the Congress of Racial Equality; the Rev. Milton A. Galamison, who organized two New York school boycotts, and

Lawrence Landry, organizer of Chicago school boycotts.

Hobson, a research economist with the Department of Health, Education and Welfare, heads the local chapter of ACT. He became active in ACT after he was expelled from CORE for disobeying national officials of that organization.

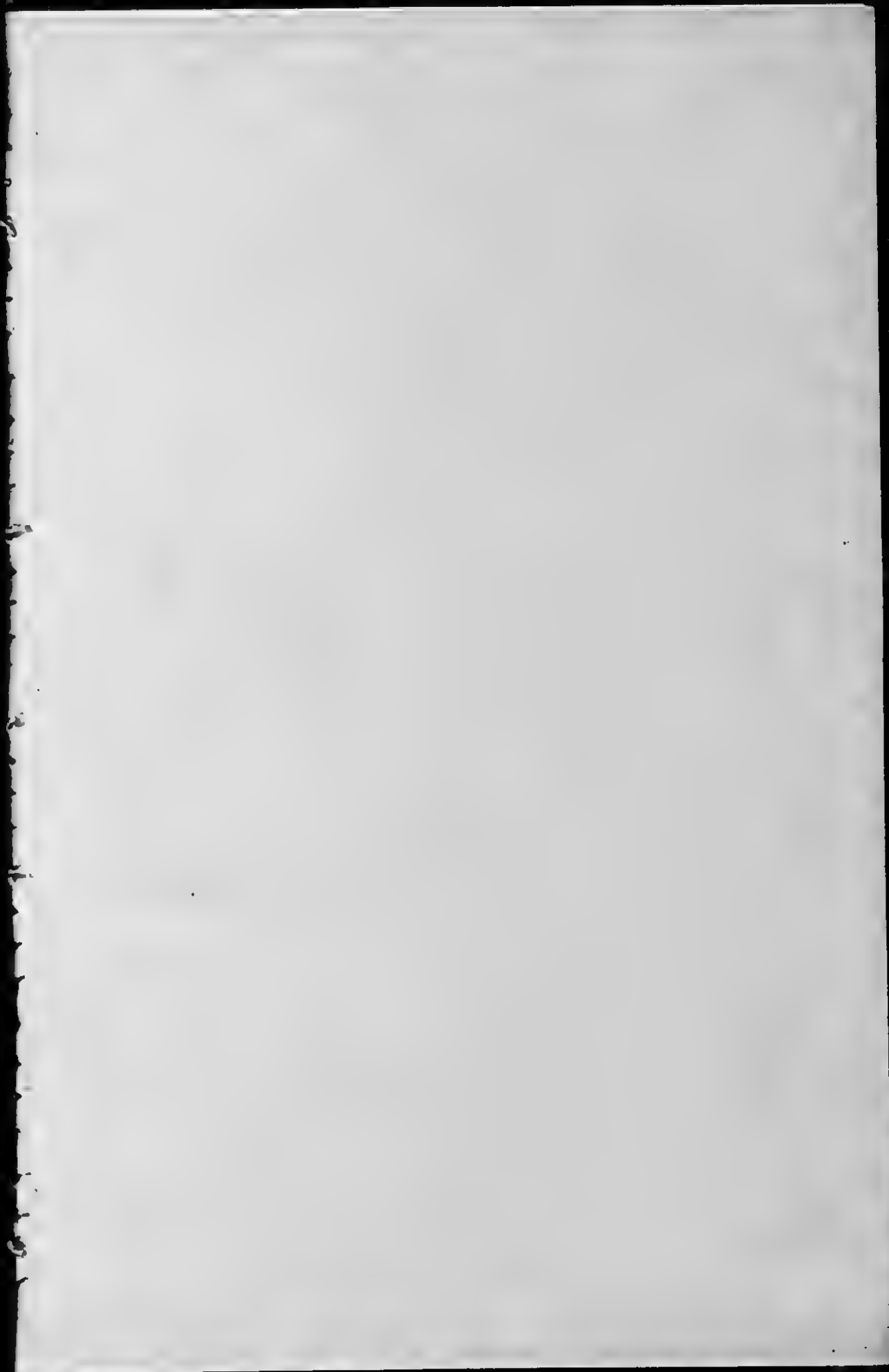
Hobson also was active at one time in the National Association for the Advancement of Colored People and Urban League organizations. However, he says he feels that these groups are not active enough in dealing with the problems of the Negro masses and do not represent those who live in the slums.

50 to 100 Members

The local chapter of ACT has somewhere between 50 and 100 active members, according to its officials of this organization.

The League for Universal Justice and Goodwill was founded about four years ago by the Rev. Walter A. Gray, who is now its national chairman.

Mr. Gray, 75, of 301 11th St. NE, said that his organization is a combination of 25 other groups, including ACT. Most of



the affiliated groups are smaller Baptist churches, neighborhood and block groups, he added.

Gray estimated that the affiliated groups have about 2,000 members.

"We don't accept anyone who works against the American way of life," Gray said. "We don't want Muslims or black nationalists — we have had enough of that."

Praised by Powell

A spokesman for Rep. Powell has given the League full credit for persuading the Negro congressman to order hearings by a special subcommittee on the anti-poverty program in Washington and the role the schools are playing in this effort.

Gray said that when the league first approached Powell about holding hearings on the anti-poverty operation here, the congressman said he wanted to get the sentiments of the "general ordinary people."

The league then prepared a petition with 130 names of people who Gray said are "grassroots community leaders." Powell's aides report that the congressman was "tremen-

dously impressed" by the complaints in this document about the anti-poverty drive and the school system.

Complaints against the school system filed recently by the league and ACT with the U. S. Office of Equal Education Opportunities contend that racial discrimination is practiced in the school track system, in the allocation of school money and in appointments to top-level school administrative posts.

David Seeley, director of this office, said that "while these complaints are being investigated, we have not yet made any decision on whether there should be a formal investigation."

School Supt. Carl F. Hansen has said that he "welcomes" the probe and that he does not know of any racial discrimination in the school system.

He declined to comment on the league and ACT. He added that "public schools are the public's business and they are open to study and criticism by any responsible group."

A-4
**THE SUNDAY STAR
Washington, D. C., April 19, 1964

Civil Rights Militants Call for New Protests

By CLARENCE FUNTER
Staff Writer

Acts of civil disobedience such as massive traffic tieups and Nation-wide boycotts of selected products were called for here yesterday by a group of Young Turks in the Civil Rights movement.

Such programs, the militants explained, will give a new thrust to the Negro drive for emancipation from the ills of racial segregation and discrimination.

Leaders of ACT, a new organization of civil-rights militants, met for more than eight hours in the Odd Fellows Hall at 1833 Ninth street N.W. to fashion their program. More than 100 persons, less than 25 of them whites from Eastern Seaboard States and as far west as Chicago, attended the meeting.

Resolutions Adopted

Resolutions adopted unanimously by the group called for:

1. Support and participation in the plan to clog all expressways leading to the New York World's Fair site Wednesday or sympathy "stall-ins" at other cities throughout the country to protest job discrimination, slum housing, educational segregation and police brutality allegedly suffered by Negroes and Puerto Ricans.

2. Nationwide boycott of all California wines and fruits to protest the fact that State will submit a fair housing law to a voter referendum this fall. Act takes the position that the right of Negroes to open occupancy housing could not be decided by popular vote.

3. A Nationwide school boycott beginning in September as a protest against de facto and de jure school segregation throughout the country.

4. A national ACT housing day on June 1 when civil rights advocates will stage rent strikes and picket segregated housing as a protest against what ACT considers intolerable housing conditions suffered by Negroes and other minorities.

Long, Hot Summer

"This will be a long, hot summer and I personally intend to make it the longest, hottest summer this country ever has had," declared a member of the Brooklyn chapter of the Congress of Racial Equality.

The Triboro (Brooklyn, Manhattan and Bronx) CORE chapters of New York City are sponsoring Wednesday's World Fair tie-up. The demonstration is scheduled to begin at 7 a.m.

Yesterday's meeting was the second in ACT's month-long existence. The next meeting is set for May 23 in New York City.

Leaders of ACT were almost unanimous in attacking the civil rights bill now being debated in the Senate.

Julius Hobson, Eastern regional director of CORE, said the civil rights bill "is of no concern to me."

"I have no enthusiasm for the bill," Mr. Hobson said. "I would not spend five minutes of your time lobbying for it."

Protest Is Voiced

Another speaker at a meeting here, Nahaz Rogers of the Negro American Labor Council in Chicago, said if the civil rights bill passes, there are laws on the books, which if used, will correct the wrongs we protest against. Why should we believe that the civil rights bill will do all its purports to do?

Lawrence Landry, ACT's only officer and organizer of Chicago's school boycotts, had this to say about the civil rights bill:

"They give you something and start taking it away piece by piece, and force you to fight for something you didn't ask for in the first place."

Representative Powell, Democrat of New York and an official consultant to ACT, said passage or defeat of the civil rights bill "will not mean very much to two-thirds of the Negroes in the United States."

"I resent the paternalism voiced this week by Humphrey (Democratic Senator from Minnesota) and Kuchel (Republican Senator from California),



LAWRENCE LANDRY

—AP Wirephoto

telling us what we shouldn't do," Mr. Powell said.

"This is the kind of paternalism the black man is through with. We don't want the white man to tell us what to do. We will do what is best for us."

Senators Humphrey and Kuchel, floor managers of the bill, warned last week that demonstrations which might cause inconvenience or discomfort to a large number of people, or which might incite violence, were hampering the chances of passing the civil rights bill.

Mr. Powell said he felt that demonstrations "will help rather than hurt passage of the bill."

Among those attending the meeting in the Odd Fellows Hall at 1833 Ninth street N.W. were A. A. Rayner of Chicago, who was defeated by Representative Dawson in the Democratic primary; Jesse Ray, leader of the Harlem rent strikes; John Wilson, leader of the Students' Appeal for Equality in Princess Anne County, Md.; the Rev. John Brecken, leader of the Boston school boycott; Mrs. Gloria Richardson, leader of the Cambridge (Md.) movement; and Herbert Callender, leader of last summer's CORE protests against employment discrimination in the Bronx.

June 20, 1966

CONGRESSIONAL RECORD — HOUSE

13051

AVAILABILITY OF AMMUNITION TO
MEN SERVING IN VIETNAM

(Mr. AYRES (at the request of Mr. BUCHANAN) was granted permission to extend his remarks at this point in the Record and to include extraneous matter.)

Mr. AYRES. Mr. Speaker, I was deeply shocked when I received a letter signed by 29 members of the 94th Ordnance Company serving in Vietnam that outlined a situation that seemed almost unbelievable to me.

I can understand the deep sense of frustration that must be enveloping these men—a frustration that would cause them to turn to a Member of Congress for help.

These men were chosen for service by the armed services. They underwent stringent mental and physical examinations. They have undergone military training. Certainly they are to be trusted with ammunition—particularly in that part of Vietnam that has been under sniper attack.

I have turned this letter over to the distinguished and able L. Mendel Rivers, chairman of the House Armed Services Committee, and have asked that a full-scale investigation be held to find the reasons behind the action charged in this letter.

I have no answer to send to these men but I intend to pursue this question until one is forthcoming. I have written to these men informing them that I have called for this investigation and have asked them to inform me of any repercussions that they might possibly suffer because of their action in reporting these facts to me.

The letter that I received from 29 members of the 94th Ordnance Company follows:

APO SAN FRANCISCO,

June 6, 1966.

DEAR SIR: I don't know for sure whether I have a legitimate complaint or not but I thought that I had better find out.

We are serving our country in Viet Nam with our ammunition locked up in a conox. Even though we are in the second safest place in Viet Nam there have been several incidents where people on guard duty have been shot at.

Too, GIs were shot at and killed just 1,500 feet from where we are based.

At any time we could be attacked. We would like to know if there is anything that could be done about this situation.

We would appreciate any help that you could give to us.

Sincerely,

The GIs from the 94th Ordnance Co.: Pfc. Marvin P. Hottinger, Jr.; Spic. Charles F. Engle; Pvt. E-3 John Krus; Spic. Donald G. Baker; Spic. David M. Marks; Spic. Cleveland E. Storns; Pfc. John A. Blackburn; Spic. Frank D. Fowler; Spic. Craig H. Roo; Pfc. John J. Mytych; Sp. David A. Michad; Sp. Melrich O. Dio; Spic. Lloyd Porkins; Pfc. Charles Penir; Spic. Leonard Einhorn; Spic. Howard N. Swecker; Pfc. Harry D. Diaz; Spic. John Gloydus; Pfc. Marlin Parahangh; Spic. Steve Pagle; Pfc. Byron Donohoe; Pfc. Fred Dennicoff; Pfc. John Hoffman; Spic. Lawrence Stone; Pvt. Clifford Meeker; Pfc. Wallace Waldeop; Pfc. William Smith; Spic. James M. Bamorietz; Spic. Louis Sember; Richard Stoner.

DISTRICT OF COLUMBIA SCHOOLS
"REPORT"

(Mr. GURNEY (at the request of Mr. BUCHANAN) was granted permission to extend his remarks at this point in the Record and to include extraneous matter.)

Mr. GURNEY. Mr. Speaker, on Friday morning, June 17, there was released a committee print entitled "A Task Force Study of the Public School System in the District of Columbia as It Relates to the War on Poverty." The report further states that this study was conducted by the Task Force on Anti-poverty in the District of Columbia of the Committee on Education and Labor.

Mr. Speaker, I am a member of that task force, and the first time I saw that report was Friday morning. I was not afforded an opportunity to participate in the drafting of the report; I was not informed that it was about to be published. The report was not discussed at a meeting of the subcommittee called for that purpose.

Furthermore the minority staff of the committee was not notified, nor were they given an opportunity to even read the report before it was released. No provision was made for the preparation of minority views or additional comment.

In short, that report is not the work of any task force in which I participated, although it purports itself to be such. I wish at this time to disassociate myself from the report and to make it very clear that I had no part in determining its contents.

(Mr. GURNEY (at the request of Mr. BUCHANAN) was granted permission to extend his remarks at this point in the Record and to include extraneous matter.)

[Mr. GURNEY'S remarks will appear hereafter in the Appendix.]

CLARIFYING AND PROTECTING THE
RIGHT OF THE PUBLIC TO
INFORMATION

(Mr. CRAMER (at the request of Mr. BUCHANAN) was granted permission to extend his remarks at this point in the Record and to include extraneous matter.)

Mr. CRAMER. Mr. Speaker, I was unavoidably detained at an important meeting and missed by a few minutes being present for the vote on S. 1160, clarifying and protecting the right of the public to information. Had I been present, I would have voted for passage of the bill and, for the record, want to announce my position in support of the legislation, which is best evidenced by my introduction of a similar bill, H.R. 14915.

In support of this position, I can do no better than to quote the conclusion of the Committee on Government Operations in reporting the bill to the House:

A democratic society requires an informed, intelligent electorate, and the intelligence of the electorate varies as the quantity and quality of its information varies. A danger signal to our democratic society in the

United States is the fact that such a political truism needs repeating. And repeated it is, in textbooks and classrooms, in newspapers and broadcasts.

The repetition is necessary because the ideals of our democratic society have outpaced the machinery which makes that society work. The needs of the electorate have outpaced the laws which guarantee public access to the facts in Government. In the time it takes for one generation to grow up and prepare to join the councils of Government—from 1946 to 1966—the law which was designed to provide public information about Government activities has become the Government's major shield of secrecy.

S. 1160 will correct this situation. It provides the necessary machinery to assure the availability of Government information necessary to an informed electorate.

(Mr. LANGEN (at the request of Mr. BUCHANAN) was granted permission to extend his remarks at this point in the Record and to include extraneous matter.)

[Mr. LANGEN'S remarks will appear hereafter in the Appendix.]

THE FUTURE FOR CORN

(Mr. FINDLEY (at the request of Mr. BUCHANAN) was granted permission to extend his remarks at this point in the Record and to include extraneous matter.)

Mr. FINDLEY. Mr. Speaker, on June 6, Robert C. Liebenow, president of the Corn Industries Research Foundation, Inc., which is composed of the companies which process corn for industrial and food uses, made an unusual speech at French Lick, Ind. He discussed corn and its importance in most interesting terms, but he went further and stated firmly and persuasively that farmers should receive a fair price in the market for their products. He also criticized recent efforts to beat down farm prices, pointing out that these prices are low in comparison to wages and industrial prices.

Below are extracts from his excellent speech:

THE PROCESSOR MARKET—PRESENT AND FUTURE

A booming and an exciting processor market lies ahead for today's corn producers. It is a market whose value will be increased in the years ahead.

Much of this is due to the versatility of corn, our top crop. Much of this is due to the imaginative efforts of our corn farmers, seed producers, the agricultural community—and to processors like those I represent.

Nor should we overlook the vital marketing role played by grain and seed dealers, the commodity exchanges, our transportation industries—and many others. Their teamwork makes it possible for the 7 percent of our population living on farms to feed the other 93 percent of us, and have food left over for some of the rest of the world besides.

All of us are dedicated to doing a better job for agriculture. This we can do, but there are some stern tests of our patience and our ability just ahead of us.

First, let me say that the health of corn processing is and will continue to be excellent. I am confident that the market I represent will be an important—and growing—

[Filed December 22, 1966]

[Plaintiffs']

FINDINGS OF FACT AND CONCLUSIONS OF LAW

I

FINDINGS OF FACT

[All findings, unless otherwise indicated, pertain to the District of Columbia Public School system.]

All references to the transcript herein are referred to by the letter "T", to plaintiffs' exhibits by capital letter followed by a number (e.g. "A-3") and to defendants' exhibits by a number only, (e.g. 51)]

A. The Parties

1. Plaintiffs

a. Plaintiffs, SAMUEL D. GRAHAM, MARY ALICE BROWN, WILLIE DAVIS, JR., JAMES K. WARD, PAUL LINE SMITH and JOYCE I. MAKEL, at all times relevant herein, were and are the parents or guardians of children enrolled as pupils in the public schools of the District of Columbia (Complaint, § 1 (b), T. 1046-47).

b. Plaintiffs, BARBARA JEANE GRAHAM, (Eastern High School); KAREN CHANDELLE GRAHAM, (Hines Jr. High School); CHARLES HUDSON BROWN, (Langdon Elementary School); MAURICE HOOD, (Randall Jr. High School); RONALD D. DAVIS, (Crosby Noyes Elementary School); REGINALD D. DAVIS, (Crosby Noyes Elementary School); CHRYCYNTHIA ELAIN WARD, (Congress Heights Elementary School), and MITCHELL I. MAKEL, (Crosby Noyes Elementary School) at all times relevant herein, were and are pupils enrolled as such in the designated public schools of the District of Columbia (Complaint, ¶ 1(a)).

c. Plaintiffs, JULIUS W. HOBSON, SAMUEL D. GRAHAM, MARY ALICE BROWN, PAULINE SMITH, WILLIE DAVIS, JR., JAMES K. WARD, JOYCE M. MAKEL and CAROLYN HILL STEWART, at all times relevant herein, were and are residents, citizens and taxpayers of the District of Columbia (Complaint, § 1 (b)).

d. Plaintiff CAROLYN HILL STEWART, at all times relevant herein, was and is a permanent teacher employed as such in the public schools of the District of Columbia (Complaint § 1 (c)0.

e. The plaintiffs are suing on behalf of themselves and all persons similarly situated (Complaint § s 1(a), (b) and (c) and 2).

f. Plaintiff JULIUS HOBSON removed his daughter JEAN HOBSON from the school system in 1965 after being placed in the special academic track and enrolled her in the Glaydin School and Camp in Virginia at a tuition cost to plaintiff HOBSON of \$1700 annually (T. 707-8, 1972-1981).

2. Defendants

a. Defendant CARL F. HANSEN, at all times relevant herein, was and is to Superintendent of Schools of the District of Columbia. He was first appointed by the Board of Education of the District of Columbia as the Executive Assistant to the then Superintendent of Schools in March, 1947, and served as such until August, 1947, when he was placed in charge of the white elementary schools and curriculum planning for the entire public school system. In 1955, he was placed in charge of the senior high schools and in 1958 was appointed to his present position. As said Superintendent of Schools he is the official with full executive responsibility for the administration and operation of the public school system of the District of Columbia (Complaint, § 3(b), T. 37-40, 2278-79).

b. Defendants WESLEY S. WILLIAMS, CARL SMUCK, EVERETT A. HEWLETT, WES A. HAMILTON, LOUISE S. STEELE, EUPHEMIA L. HAYMES, GLORIA K. ROBERTS, PRESTON A. McLENDON, and IRBING B. YOCHELSON, at all times relevant herein, were and are members of the Board of Education of the District of Columbia, having been duly nominated and appointed as such by the District Judges of the

United States District Court for the District of Columbia District, pursuant to § 31-101 of the D.C. Code (Complaint, § 3 (a)).

c. Defendants WESLEY S. WILLIAMS, GLORIA K. ROBERTS and PRESTON A. McLENDON, having duly resigned or been replaced as members of the Board of Education, on or about July 1, 1966, were dropped as parties defendants by order of the court (T. 2468-69, 3987).

d. Defendants JOHN A. SESSIONS, ANN HAYNES STULTS and BEHJAMIN H. ALEXANDER, are members of the Board of Education, having been duly nominated and appointed as such by the District Judges of the United States District Court for the District of Columbia District, pursuant to § 31-101 of the D.C. Code, on or about July 1, 1966. They were added as parties defendant by order of the court (T. 2468-69, 3987).

B. The District of Columbia

1. The Board of Commissioners

a. The District of Columbia is governed by a three-man Board of Commissioners which, among other things, provides the operating and capital outlay budgets for its various departments, including the public school system (T. 273-4).

b. Walter Tobriner is President and a member of the Board of Commissioners (T. 274).

c. Mr. Tobriner was a member of the Board of Education from 1953 to 1961, and its president from 1958 to 1961 (T. 274-5).

2. The District of Columbia Budget

a. The Board of Commissioners considers and approves all departmental budgets including that of the Board of Education (T. 276).

b. Following approval, by the Board of Commissioners, the entire District of Columbia budget is then presented to the Federal Bureau of the Budget

for inclusion, when approved, into the President's budget in late December or early January (T. 274, 2692-3).

c. The President's budget, after approval by the House of Representatives and the Senate, then becomes operative (T. 2693).

d. The District of Columbia budget is funded by the total of its local taxes and the federal payment (T. 286).

e. Local taxes include, inter alia, license fees and other excise taxes; income, real property, personal property, telephone and sales taxes, all of which are paid into the Treasury of the United States (T. 282).

f. Of these taxes, only the real property and personal property levies are solely within the control of the Board of Commissioners except for a minimum real property tax of \$2.26 per hundred of assessed valuation, which is fixed by the D.C. Code (T. 282).

g. The real property tax, per \$100 in assessed valuation, was \$2.30 in fiscal 1960, \$2.50 in fiscal 1962 and \$2.70 in fiscal 1966 (T. 283).

h. The current borrowing limit of the District of Columbia as authorized by Congress is \$225,000,000, of which \$50,000,000 is earmarked for mass transit purposes (T. 300).

3. The Board of Education Budget

a. Since 1961, the Board of Commissioners has recommended five Board of Education budgets to the Congress (T. 277).

b. In some cases and in some areas, the Board of Commissioners augmented the original requests by the Board of Education (T. 278, O-1).

c. In others, the Board of Commissioners reduced the original requests by the Board of Education (T. 280-1, O-1-3).

d. Since 1961, the Board of Commissioners have approved less than 2/3 of capital requests made by the Board of Education (T. 289, A-3, p. 9).

e. The 1966 budget for the Board of Education recommended by the Board of Commissioners was \$107,000,000 (T. 297).

f. The final appropriation by Congress in 1966 was \$93,000,000 (T. 297).

g. The 1967 budget for the Board of Education recommended by the Commissioners is \$114,500,000 (T. 297, 3957).

4. Other Departments

a. The requests of the Welfare, Health and Police Departments of the District of Columbia and the action of the Board of Commissioners respecting same for the years indicated, were as follows:

(a) 1965

(a) Department (b) requested (c) approved

Welfare
Health
Police

(2) 1966

(a) Department (b) requested (c) approved

Welfare
Health
Police

(3) 1967

(a) Department (b) requested (c) approved

Welfare
Health
Police

b. The District of Columbia has more police than are currently authorized (T. 302).

C. The District of Columbia Public School System

(1) General Information

a. Prior to the decision of the United States Supreme Court in Bolling v. Sharpe, 347 U.S. 497 (1954), on May 7, 1954, the public school system was divided into two divisions, as follows: Division 1 — white pupils; Division 2 — Negro pupils (T. 41).

b. The two divisions ended after the decision in Bolling v. Sharpe, *supra*, with the creation of a single school system containing both white and Negro pupils (T. 43-44).

c. At present, the pupil population is in the neighborhood of 170,000 of which approximately 93% is Negro (A-3, pp. 20, 75 C-2 T. 2073; 142).

d. The District of Columbia has a compulsory Attendance Act requiring children from the ages of 7-16 to attend school (T. 515).

e. The Attendance Department of the school system enforces this statute (T. 515).

f. The elementary schools go from kindergarten through the sixth grade inclusive (T. 228).

g. The junior high schools go from the seventh through the ninth grades inclusive (T. 228).

h. The senior high schools go from the tenth through the twelfth grades inclusive (T. 228).

2. The Board of Education

a. Selection, Qualifications, and Composition

(1) The nine members of the Board are nominated pursuant to §31-101 of the D.C. Code by the District Judges of the United States District Court for the District of Columbia after being first approved by a three-judge selection committee (A-3, p. 6, Complaint, T. 6).

(2) The only qualifications for membership on the Board are five years residence in the District of Columbia and that three members must be women (A-3, p. 6).

(3) The Board is not representative of the citizens of the District of Columbia (A-3, pp. 6-7).

b. Functions

(1) Policy Making

(a) Theoretically, the Board formulates and establishes all policies for the school system (A-3, p. 6).

(b) None of the Board's nine standing committees is charged with responsibility in the fields of curricula and educational programs (A-3, p. 8).

(c) The Board does not seek or encourage the expression of community views on policy initiation, change or review (A-3, p. 8).

(2) Relations with the Superintendent of Schools

(a) The Superintendent recommends the establishment of policies by the Board and, following their adoption, is responsible for putting them into operation (T. 974).

(b) The Superintendent has, on many occasions, pressured and stampeded the Board into making fundamental policy decisions without being permitted to read and digest the materials relating thereto (T. 976-7).

(c) The Superintendent does not furnish the Board with full information, including opposing views, about policies recommended by him for its consideration (A-3, pp. 7-8).

(d) The Board of Education has abdicated its policy making function to the Superintendent (A-3, p. 8).

c. Budget

(1) Actual

(a) The fiscal year for the District of Columbia public school system runs from July 1st to June 30th (T. 2689, 3951).

(b) School budget preparation in the District of Columbia for the next fiscal year starts in approximately February of each year and is presented to the Board of Education the following July (T. 2690-91, 3951).

(c) After approval by the Board of Education in late September or October the budget is then presented to the Commissioners of the District of Columbia (T. 2691-92).

(d) Capital outlay includes funds for construction of new buildings, additions to existing buildings and major renovation (T. 2673).

(e) Operating expenses include costs that recur from year to year, such as all salaries, the cost of text and work books, utilities, transportation, free lunches, and the like (T. 2673-4).

(f) Congress has the power to appropriate whatever funds are called for in a school budget (T. 624).

(g) The school budget for the school year 1966-'67 sought \$107,000,000 of which \$75,000,000 was for operating costs and \$32,000,000 for capital outlay (T. 297, 2671-2).

(h) In 1966, Congress appropriated \$93,000,000 for the Board of Education Budget (T. 297).

(i) The school budget for the school year 1967-'68 seeks \$114,500,000 of which \$82,500,000 is for operating costs and \$32,000,000 for capital outlay (T. 2673, 3957).

(2) Model

(a) In January of 1966, a model school budget calling for the expenditure of approximately \$478,000,000 was prepared (T. 439-441, A-3, pp. 83-102).

(b) This budget was prepared at the request of Representative Roman Pucinski, (D., Ill.), for one to meet the basic financial needs of the District of Columbia in order to furnish an adequate school system for the children of the district (T. 440, 445-6, A-3, pp. 79-82).

(c) The model school budget was 300% greater than that submitted to the Board of Commissioners for the same fiscal year (T. 446, A-3, pp. 83-102).

(d) The model school budget was never submitted to the Board of District Commissioners (T. 441, 3955).

(e) The model school budget was for a single fiscal year (T. 621, 3956).

d. Sources of Funds

(1) Taxation

See B 2- e-g incl.

(a) Congress

Congress supplies the difference between the amount appropriated by it for the District of Columbia Budget and that raised by local taxes (T. 286).

(3) Other federal funds

(a) The school system is eligible for funds from a number of federal sources including the Elementary and Secondary School Act of 1965 (ESEA) and the Impacted Aid Act (Public Law 874) (I 6-8).

(b) Title I of ESEA provides funds for educationally deprived children in areas of highest concentration of low income (T. 2676-77, 3962).

(c) Title II of ESEA provides funds for the purchase of library books and magazines (T. 2685-3961).

(d) Title III of ESRA provides funds for innovated educational programs (T. 2685-87, 3961).

(e) Title IV of ESEA provides funds for research in the field of education (T. 2686-7).

(f) Title V of ESEA provides funds to strengthen the administration of education (T. 2686).

(g) Under the application of Public Law 874 to the District of Columbia, the funds realized therefrom are to be concentrated in schools which served the deprived attendance areas of the District (T. 2676).

(h) The school system is apprised of the availability of such federal funds (T. 452).

(i) In November of 1965 the school system missed a submission date for funds available under Title III of ESEA causing a delay of three months in receiving the applicable funds (T. 453-4).

(j) In December 1965, the school system missed a submission date for funds available for the purchase of library books under Title II of ESEA (T. 456-7).

(k) The District of Columbia is also eligible for funds pursuant to Public Law 85926, the Handicapped Children Act.

(l) Until recently, the District of Columbia failed to request these funds (T. 927).

(m) In 1966 the federal funds were as follows:

(i) Vocational Education Act	\$669,000
(ii) The National Defense Education Act of 1958	345,000
(iii) The National School Lunch Program	163,000
(iv) The Milk Program	1,032,000
(v) United Planning Organization Grant	632,000
(vi) Public Law 874 (impacted aid)	4,300,000
(vii) The Elementary and Secondary Act of 1965	6,300,000
(viii) The Manpower Adult and Training Act	615,000

(ix) The Adult Basic Education Program	151,000
(x) The I-B Program	780,000
(xi) The I-C Program (T. 264-75)	36,000

(n) For the 1966-'67 school year, the Board of Education will receive federal funds of \$15,000,000 in excess of those supplied by Congressional appropriations (T. 447, I-2).

(4) Contributions

(a) Contributions are made by PTAs and other known and anonymous donors to specific District of Columbia public schools (T. 489-504, J 1-27).

(b) One anonymous donation of \$25,000 was received in 1961 to supply food to children during a summer program provided they abided by certain rules of decorum (T. 493-494).

3. Buildings

a. Number

(1) The number of relevant school buildings is as follows:

- (i) 11 senior high school buildings;
- (ii) 25 junior high school buildings;
- (iii) 130 elementary school buildings;
- (iv) 5 vocational schools
(T. 120-121, 130, L-11, A-3, p. 24)

b. Age

(1) 31 school buildings date back to the nineteenth century and 36 to pre-World War I (A-3, p. 9, E-1).

(2) The oldest school buildings are in the poorest areas of the district (A-3, p. 9).

c. Capacity

(1) The predominantly white elementary schools generally operate at or below capacity (T. 122, 136, A-3, pp. 10, 15-17, L-11).

(2) The predominantly Negro elementary schools generally operate at or above capacity (T. 122, 136, 2272-3, 4055-56, A-3, pp. 10, 15-17, L-11).

(3) There are fewer overcrowded classrooms in the predominantly white elementary schools than there are in the predominantly Negro elementary schools (T. 3813).

d. Location

(1) The achievement of integration has never been the primary consideration in the location of school sites (T. 2782, 3725-26).

(2) The primary consideration in the location of elementary school sites is the neighborhood school policy (T. 3725-26).

(3) No elementary schools have been built during the past six years on the boundary line between predominantly white and predominantly Negro residential neighborhoods (T. 552-3, N-1, N-7a).

(4) The school system has never thought of building public schools in Rock Creek Park (T. 3669).

(5) The school system did not take into consideration any site west of Rock Creek for the construction of the new Lincoln Senior High School (T. 2977).

(6) At the time of the contemplation of the building of Rabaut Junior High School, no thought was given to the construction of a new junior high school in the predominantly white, northwest areas of the city of Washington (T. 2843).

(7) Prior to the selection of the present site for Rabaut Junior High School, the school system was urged to build it near the Walter Reed Hospital for integration purposes (T. 2785-86).

(8) Rabaut Junior High School was ultimately built

by site on South Dakota and Kansas Avenues in a predominantly Negro area (T. 2780-81, 2786-87).

(9) Under the original boundary lines contemplated for Rabaut Junior High School, the Takoma Elementary School would have been one of its feeder schools (T. 2795).

(10) As of October 21, 1965, Takoma Elementary School had 355 Negro and 189 White students (T. 2795, P-4).

(11) As a result of criticism, of several school principals, the line was changed to its present status, thus eliminating Takoma Elementary School as a feeder area for the Rabaut Junior High School (T. 2798, 2809).

(12) The change in the contemplated boundary line for the Rabaut Jr. High School from a north-south line to an east-west line was motivated by racial considerations (T. 2814-15).

e. Inadequacy

(1) With reference to the proposal of the General Accounting Office to close certain elementary schools as inadequate, the Board of Education approved their continued use (T. 3720-3758).

(2) As to the absence of such facilities as libraries and cafeterias, see 4 and 5, infra.

(3) Many children in the Negro and low income areas of the district are forced to attend school in substandard and inappropriate facilities (A-3, pp. 10-11).

4. Library Services

a. Librarians

(1) Only approximately 26 elementary schools have full time professional librarians (A-3, p. 29).

(2) The minimal standards of the American Library are 300 librarians for the elementary schools (A-3, p. 29).

(3) Most of the elementary schools in the poorer areas of the district lack professional librarians (A-3, p. 30).

(4) The total number of elementary school librarians requested in the 1966-'67 school budget was only 67 (A-3, p. 29).

b. Libraries

(1) Many elementary schools do not have libraries or must use makeshift facilities (T. 4095, H-1).

(2) The 1966 budget provides for only 8 school libraries in the elementary schools (T. 3752).

(3) In the 1966-'67 budget the District of Columbia public school system did not ask for enough money to provide libraries where physical space was available for them in the elementary schools (T. 3754).

(4) The predominantly Negro and less affluent elementary schools have a lower percentage of libraries than the predominantly white and more affluent ones (A-3, p. 30, H-1, H-4).

c. Books

(1) The American Library Association standard of the number of books per pupil in the elementary schools is ten (T. 3978).

(2) There is a great variation in the number of volumes in libraries throughout the school system (T. 429, 3968-69, H-3-5).

(3) The predominantly Negro and less affluent schools have a lower percentage of library books than the predominantly white and more affluent ones (A-3, p. 30, H-3-5).

5. Cafeterias

Only the elementary schools built within the last eight years have cafeterias (T. 572).

6. Kindergartens

a. There is a waiting list for entrance to many kindergartens in the predominantly Negro elementary schools (T. 626-27, 4068-9).

b. There is no waiting list in the predominantly white elementary schools (T. 626).

c. There is a critical shortage of kindergarten classroom space in the predominantly Negro and less affluent elementary schools (A-3, p. 10).

7. Educational Materials and Supplies

a. Textbooks

(1) Predominantly Negro elementary schools have not had a full complement of textbooks every school year (T. 4097, A-3, pp. 50-52).

(2) Dr. Jean D. Crambs duly qualified as an expert in the field of educational sociology and in particular, the needs of minority children with reference to educational materials (T. 6475).

(3) Educational materials in which culturally disadvantaged children in metropolitan centers can identify themselves materially assist the public schools in educating them (T. 6153-54, 6476).

(4) There are a great many educational materials of this type for use in school systems (T. 6147, 6477, W-9-17).

(5) Several metropolitan school systems have produced such materials for use in their systems (T. 6484, W-10, W-12-16, W-18-25).

(6) Textbooks which are designed to include environmental factors familiar to children who live in the city increase their sense of self-respect and identification and establish guidelines which will lead him to the values and standards necessary to escape the limits of his environment (T. 6490).

(7) The school system has purchased only a few of the available educational materials of this nature (T. 6499-6501; 104).

(8) Educational materials geared to the environment of the minority child are pedagogically sound for them (T. 6501-6503).

(9) Multicultural and interracial textbooks are also suitable and advantageous to white students (T. 6513-14).

b. Teaching Aids

(1) Only one elementary school has film strips for use in its classes (T. 6157).

c. Supplies

Predominantly Negro elementary schools do not have a full complement of supplies for every school year (T. 4099).

8. Personnel

a. Administrative

(1) The public school system operates along definite lines of command (T. 55, K-11).

(2) The administrative personnel is divided into fifteen levels, running from Class 1 through Class 15 (T. 45).

(3) From 1947 to date the Superintendent of Schools has always been a white person (T. 45, 1244).

(4) The Superintendent of Schools is the only person in Class 1 (T. 46). The Deputy Superintendent of Schools, a white person, is the only person occupying Class 2 (T. 46, K-3, 6).

(5) Class 3 is composed of ten Assistant Superintendents and the President of the District of Columbia Teachers College (T. 47).

(6) Of these eleven persons in Class 3, four are Negro and seven are white (T. 49, K-3, 5-6).

(7) All of the white persons and two of the Negroes in Classes 1, 2 and 3 are occupying permanent positions, while two of the Negroes are occupying temporary positions (T. 49-50).

(8) Class 4 includes the Dean of the Teachers College, the Director of Curriculum and the Executive Assistant to the Superintendent of Schools (T. 51).

(9) At the present time the Dean of the Teachers College is a Negro, the Director of Curriculum is white, and the Executive Assistant to the Superintendent is Negro (T. 51, K-3, 5).

(10) Class 5 includes four positions, namely, the Executive Assistant to the Deputy Superintendent, the Chief Examiner, the Director of Adult and Industrial Education and the Director of Food Services, all of whom are white persons (T. 52, K-3, 5).

(11) The Office of the Statistician of the District of Columbia public school system, which is supervised by a white man, has eight white and two Negro employees (T. 2538-40).

(12) There was one Negro employee in this department in 1940 and the second was added in approximately 1956 or 1958 (T. 2541).

b. Supervisory

(1) Since July 1, 1958 81 persons have been appointed to the position of principal or assistant principal in the junior and senior high schools of the District of Columbia (T. 2962).

(2) Of the 25 principals involved, 9 were white and 16 Negro (T. 2962).

(3) Of the 60 assistant principals involved, 15 have been white and 45 Negro (T. 2962).

(4) The four senior high schools which do not have integrated administrative staffs are Wilson, Spingarn, Dunbar and Cardozo (T. 2963).

(5) Announcements of available administrative positions do not designate any particular school to be so staffed (T. 2964, 3002, 3072).

(6) Applicants for such positions after taking the requisite examination, are screened by an examining

board which ranks them and submits a rank list to the Superintendent (T. 2966).

(7) The Superintendent submits the rank list to the Board of Education with recommendations as to particular persons thereon (T. 2966-67).

(8) Since July 1, 1958, an assistant principal has been appointed at the Deal Jr. High School (T. 2970).

(9) Since July 1, 1958, there have been four principal and assistant principal appointments at Woodrow Wilson Sr. High School (T. 2970-1).

(10) The assistant superintendent for the junior and senior high schools has the power to assign any person under his jurisdiction to an available opening to any school (T. 2883).

(11) The assistant superintendent for the junior and senior high schools, a white man, has never assigned a Negro principal or assistant principal to Wilson Sr. High School (T. 2883).

(12) He has never assigned any Negro assistant principal to Deal Jr. High School (T. 2884).

(13) The principal and two assistant principal positions at both schools have always been occupied by white persons (T. 2882, 2886-87).

(14) At both Deal Jr. High School and Wilson Sr. High School, only white candidates for supervisory positions have been successful (T. 2887-91).

(15) There have never been white principals and white assistant principals at predominantly Negro schools (T. 2990).

(16) Recently Negro assistant principals have been appointed for Spingarn, Dunbar and Cardozo Senior High Schools, all of which are predominantly Negro institutions (T. 2991-2).

(17) Mrs. Elizabeth Greene, a Negro, was appointed an assistant principal at Eastern Senior High School, which had a population of 2700 Negro and 900

white children, rather than at predominantly white Woodrow Wilson Senior High School, where a vacancy existed, because of her race (T. 2995-96).

(18) At the same time, Mrs. Carroll, a white person, was appointed an assistant principal at Woodrow Wilson Senior High School because of race (T. 2997-3001).

(19) Recently a white man was appointed as the principal of Western High School which, on October 21, 1965, contained 627 white and 696 Negro students (T. 3023-24).

(20) The principal in question had requested a transfer to Western Senior High School from Paul Junior High School (T. 3023).

(21) No Negro principals or assistant principals have been appointed for the predominantly white elementary schools (T. 3076).

c. Custodial

(1) Negroes employed as custodial personnel far outnumber whites so employed (K-4).

(2) Negroes are not appointed to supervisory posts in any reasonable proportion to their percentages (K-4-5).

d. Teaching

(1) Population

(a) There are approximately 6100 teachers in the public school system (T. 59, M-1).

(b) Negroes constitute more than 75% of the total number of teachers employed in the school system (T. 735, A-3, pp. 22-24, L-3).

(2) In General

(a) The theory in paying a teacher with advanced degrees more than one without is that the former makes a better teacher (T. 3793).

(b) A teacher with more years of experience is generally a better teacher than one without such experience (T. 3796-97).

(c) The quality of teachers affects the quality of instruction given at any particular school (T. 6354).

(3) Permanent

(a) Permanent teachers in the elementary schools and the junior high schools must possess bachelor's degrees (T. 63).

(b) Permanent teachers in academic fields in the senior high schools must possess master's degrees (T. 63).

(c) Permanent teachers have a salary scale maximum of \$10,050 at Step 15 of the salary range (T. 3800).

(d) The probationary teachers in the Washington, D.C. public school system are teachers who will become permanent if they satisfactorily complete a two-year probationary period (T. 3804).

(e) The predominantly white, more affluent schools have a substantially greater percentage of permanent teachers than do the predominantly black, less affluent schools (L-4-6).

(4) Temporary

(a) Temporary teachers, defined as those not meeting the full licensing requirements of the District of Columbia, amount to more than 40% of the teaching staff, as of the school year 1965-66 (T. 2263).

(b) Temporary teachers are divided into three categories, as follows:

(i) Those who are occupying positions of a temporary nature (T. 58);

(ii) Those placed in permanent positions temporarily vacated by teachers on leave of absence (T.59);

(iii) Those who do not have the requirements for admission to probationary status (T. 60).

(c) The number of temporary teachers in group (b)(i) is in the neighborhood of 360 (T. 59, L-1, 3).

(d) The number of temporary teachers in group (b)(ii) is approximately 450 (T. 60, L-1, 3).

(e) The number of temporary teachers in (b)(iii) is approximately 2000 (T. 60, 1, 2 L-1, 3).

(f) 156 temporary teachers in the elementary schools lack bachelor's degrees (T. 62, L-8).

(g) There are an unspecified number of temporary teachers in the junior high schools who do not possess a bachelor's degree (T. 63, L-8).

(h) There are an unspecified number of temporary teachers in the senior high schools who do not possess master's degrees (T. 63, L-8).

(i) Temporary teachers in the Washington, D.C. range with a salary maximum of approximately \$6400 (T. 64-65, 3800).

(j) There are more temporary teachers, by percentage, in the predominantly Negro schools than there are in the predominantly white schools (T. 115, 2236, L-3).

(k) In the 1965-66 school year, in public schools servicing areas where the median family income range was \$3999 and less, 46% of the teachers were temporary (T. 722, V-4).

(l) In the 1965-66 school year, in public schools servicing areas where the median family income range was \$12,000 or more, 23% of the teachers were temporary (T. 722, V-4).

(m) Effective July 1, 1966, the qualifications for temporary teachers have been lowered (T. 111-114, L-17).

(5) Special Education

(a) Dr. Gertrude Justison duly qualified as an expert in the field of special education (T. 746-796).

(b) Dr. Edmonia White Davidson duly qualified as an expert in the fields of adult education and education of the disadvantaged (T. 807-852).

(c) The District of Columbia school system does not maintain a Director of Special Education at the rank of an assistant superintendent (T. 930).

(d) The Special Education Program is under the supervision of a Director of Special Education (T. 930).

(e) All children from those classified as severely mentally retarded to those classified as mildly mentally retarded require a special educational experience (T. 1876-87, 1890-91).

(f) Special education is defined as the special services necessary to develop the maximum capacity of students who deviate from the average in physical, mental, emotional or social characteristics (T. 750).

(g) A special teacher is one teaching special education (T. 909).

(h) The licensing standard of the District of Columbia for special teachers is six credits in general teacher preparation as against a minimum of 18 in the neighboring area of Maryland and 27 in the neighboring area of Virginia and falls well below the minimal standards set out in the guidelines established by the Council for Exceptional Children (T. 913-14, 1887, 1899-1932).

(i) Proper training for a special teacher is supervised clinical experience (T. 915).

(j) A school system requiring only six credits of special teacher training includes no supervised clinical experience (T. 915).

(k) The District of Columbia Teachers College is limited to undergraduate credit (T. 917).

(l) The District of Columbia Teachers College has no elementary school offerings in the field of special education (T. 918, 1923).

(m) The great majority of special teachers in the District of Columbia public school system as of 1964-66 lacked (1) a supervised practicum, and (2) the academic qualifications required by state and national standards (T. 912-13, A-11, 12, p. 12).

(6) Assignment

(a) The public school system has an expressed policy as to the assignment of teachers (L-4).

(b) According to the Superintendent of Schools, teachers are to be "assigned where needed, rather than on race . . ." (A-3, p. 22).

(c) The predominantly white schools of the district have virtually no Negro teachers while the predominantly Negro schools have virtually no white teachers (A-3, p. 22, L-3).

(7) Transfers

(a) The public school system has an expressed policy as to the transfer of teachers from one school to another (T. 67-68, L-4).

(b) No teachers in the school system, permanent, temporary or probationary, have any vested interest in remaining in any particular school (T. 2986).

(c) The only consideration for the transfer of permanent teachers is that they be satisfactory teachers and at the top of the transfer list (T. 2896).

(d) Although teacher transfers are allegedly not governed by race, it is a stated policy of the public school system to achieve a bi-racial staffing in all of its schools (T. 69, 70, 1, 2).

(e) Many white teachers between 1955 and 1965 have applied for transfers from predominantly Negro schools to predominantly white schools (T. 2275).

(f) These transfers have been approved by the responsible school authorities (T. 2276).

(g) Since 1958 there have been a number of teacher vacancies in Deal Junior High School and Woodrow Wilson Senior High School (T. 3015).

(h) Negro teachers have applied for transfers to Deal Junior High School and Wilson Senior High School (T. 2894-95).

(i) There have been 27 written requests from permanent teachers since 1958 to transfer into Deal Junior High School (T. 2959).

(j) Eight of the 27 requests were granted (T. 2959)

(k) The requests of the two Negro teachers who sought such transfers were denied (T. 2959).

(l) There have been 47 written requests from permanent teachers since 1958 for transfers into Woodrow Wilson Senior High School (T. 2960).

(m) Eleven of those 47 requests were granted (T. 2961).

(n) The one request received from a Negro teacher for such transfer was not granted (T. 2961).

(o) The first teachers to be involuntarily transferred because of need are the temporary teachers (T. 3007).

(p) Permanent teachers, in practice, are given a preference insofar as involuntary transfers are concerned (T. 3007).

(q) The Assistant Superintendent of Schools for the junior and senior high schools has the right to transfer any teacher under his jurisdiction to any junior or senior high school (T. 2987).

(r) The present Assistant Superintendent of Schools for the junior and senior high schools has not exercised that right very frequently (T. 2988).

(s) He has never transferred a teacher or a principal from one school to another for the purpose of

integrating a school faculty (T. 2989).

(8) Segregation

(a) In the school year 1961-62, 23 predominantly white schools were staffed with 310 white (91%) and 31 Negro (9%) teachers (T. 732-3, V-3, M 1-5, P 4-8).

(b) In the school year 1962-63, 23 predominatly white schools were staffed with 398 white (86%) and 49 Negro (14%) teachers (T. 732-3 , V-3, M 1-5, P 4-8).

(c) In the school year 1963-64, 19 predominantly white schools were staffed with 249 white (91%) and 25 Negro (9%) teachers (T. 732-3, V-3, M 1-5, P 4-8).

(d) In the school year 1964-65, 18 predominantly white schools were staffed with 240 white (93%) and 17 Negro (7%) teachers (T. 732-3, V-3, M 1-5, P 4-8).

(e) In the school year 1965-66, 14 predominantly white schools were staffed with 184 white (97%) and 5 Negro (3%) teachers (T. 732-3, V-3, M 1-5, P 4-8).

(f) White teachers who do not desire to teach in predominantly Negro schools are not required to do so (T. 77).

(g) It would not be difficult to obtain Negro teachers for the staffs of the predominantly white schools (T. 72-73).

(h) Of the 130 elementary schools, some 65 do not contain any white teachers while 27 have no more than 2 white teachers (T. 74, A-3, p. 22, L-3).

(i) 83 of the elementary schools possess no bi-racial faculties (T. 75, L-3).

(j) As of October 21, 1965, Deal Junior High School was staffed by 49 white and 7 Negro teachers (T. 2893, L-3).

(k) As of October 21, 1965, there were 61 white and 5 Negro teachers at Woodrow Wilson High School (T. 3012, L-3).

(l) There are no Negro guidance counsellors at Deal Junior High School (T. 2903).

(m) One out of three guidance counsellors at Woodrow Wilson Senior High School is a Negro (T. 2903).

(9) Faculty Stability

(a) Stable school faculties contribute to better education (T. 5092).

(b) The most stable elementary school faculties exist in the predominantly white schools (T. 3810).

e. Pupil

(1) Population

(a) In October, 1965, the Negro pupil population of the District of Columbia public school system was slightly under 90% of the total pupil population (T. 204, A-4).

(b) This percentage rose to 93% in October 1966 (A-3, p. 20).

(2) Segregation

(a) There are 130 elementary schools, 25 junior high schools and 11 academic senior high schools in the school system (N 7a, 7b and 7c).

(b) Only 18 elementary schools, 3 junior high schools and 3 senior high schools contain less than 85% of one race (A-3, p. 20, P-4).

(c) Only one of the 5 vocational schools contains less than 85% of one race (A-3, p. 20).

(d) A racial head count of the pupil population has occurred in October of each year since the decision in Bolling v. Sharpe, *supra* (T. 2602, P-4-7).

(e) There is one junior high school, namely, Deal Junior High School, which is predominantly white (T. 122-123, P-4).

(f) There is one senior high school, namely, Woodrow Wilson Senior High School, which is predominantly white (T. 122-123, P-4).

(g) There are approximately 18 elementary schools which are predominantly white (P-4).

(h) Severely mentally retarded children are presently attending classes in classrooms in the predominantly all white elementary schools west of Rock Creek Park (T. 2255-6).

(3) Pupil-Teacher Ratio

(a) The desired pupil-teacher ratio in the elementary schools of the District of Columbia is 30-1 and in the secondary schools 25-1 (T. 125, 890).

(b) The establishment of the thirty to one classroom ratio is for the betterment of education (T. 3815-16).

(c) In the predominantly white elementary schools, and the pupil-teacher ratio is generally lower than 30-1 (T. 127-28, A-3, pp. 15-17).

(d) In the predominantly Negro elementary schools the pupil-teacher ratio is generally higher than 30-1 (T. 127-28, A-3, pp. 15-17).

(4) Per Pupil Annual Expenditure

(a) The per pupil expenditure is the quotient obtained by dividing the number of pupils in either average daily membership or average daily attendance into the dollar volume of all costs except those reflecting capital outlay or improvement in a given school year (T. 412-13, 2694-5).

(b) The school system calculates per pupil expenditure on two bases, i.e., average daily membership (ADM) and average daily attendance (ADA) (T. 2695).

(c) ADM, or Average Daily Membership, is defined as an average of the daily pupil enrollment for a particular school year (T. 419).

(d) ADA, or average daily attendance, is defined as an average of the daily pupil attendance for a particular school year (T. 419).

(e) In any given school year, ADA tends to be lower than ADM (T. 420).

(f) Per pupil expenditures based on ADA tend to be higher than those based on ADM (T. 420).

(g) Per pupil expenditures are based on appropriated funds only (T. 422).

(h) The "per pupil expenditure" for the District of Columbia public school system varies and has varied from elementary school to elementary school (T. 413, F-1).

(i) Generally, when the black population increases the per pupil expenditure increases (T. 2320, 2325, V-14).

(j) Generally, where whites predominate, the per pupil expenditure is higher than in those areas where Negroes predominate (T. 2223, 2326, V-13-14).

(k) Generally, where poor people, irrespective of their race or color, predominate, the per pupil expenditure is less than in other areas of the District of Columbia (T. 2327, V-14).

(l) For the 1962-'63 school year the per pupil expenditures based on average daily membership for the upper 20% of the elementary schools averaged \$383.47 (T. 2710-11; 51).

(m) For the 1962-'63 school year the per pupil expenditures for the bottom 20% of the elementary schools averaged \$243.63 (T. 2711; 51).

(n) The difference between the per pupil cost for the top and bottom elementary schools was \$139.84 (T. 2711; 51).

(o) For the 1962-'63 school year the per pupil expenditure for the upper 25% of the junior high schools averaged \$463.51 (T. 2713; 51).

(p) For the school year 1962-'63 the per pupil expenditure for the lowest 25% of the junior high schools averaged \$342.99 (T. 2713; 51).

(q) The difference between the average per pupil expenditure of the upper 25% and the lower 25% of the junior high schools was \$120.60 (T. 2713; 51).

(r) For the 1962-'63 school year the per pupil expenditure for the upper three high schools averaged \$642.32 (T. 2714; 51).

(s) For the 1962-'63 school year the per pupil expenditure for the three lowest high schools averaged \$502.84 (T. 2714; 51).

(t) The difference between the average per pupil expenditure of the upper three and the lower three high schools was \$139.48 (T. 2713; 51).

(u) During the school year 1962-'63 the spread between the average expenditure per pupil for the ten top-cost schools and the ten low-cost schools was approximately \$214 (T. 6594).

(v) In the 1962-'63 school year, the high cost group of elementary schools tended to be located in the higher income areas (T. 2741).

(w) For the school year 1964-'65, 84% of the predominantly white elementary schools had per pupil expenditures above the median level (T. 730-1, V-7, F-1, A-3).

(x) For the school year 1964-'65, 44% of the predominantly Negro schools had per pupil expenditures above the median level (T. 730-1, V-7, F-1, A-3).

(y) For the school year 1965-'66, 84% of the predominantly white elementary schools received expenditures per pupil above the median of \$295, and 15% of the white elementary schools received expenditures per pupil below the median (T. 2012-13, V-7).

(z) For the school year 1965-'66, 56% of the predominantly Negro schools in the District of Columbia received expenditures per pupil below the median of \$295, and 44% of the predominantly Negro schools received expenditures per pupil above the median of \$295 (T. 2013, V-7).

(aa) The per pupil expenditure is lower in the predominantly Negro and low-income areas of the District of Columbia than the predominantly white and high-income areas of the District of Columbia (T. 6599, V-19, P-5, P-6, P-7 and P-8, F-8).

(bb) In general the pupil population of the low-cost schools is predominantly Negro; in the high-cost schools predominantly white (T. 6603-4, V-20, P-7; 51).

(cc) As a neighborhood becomes poorer the expenditure per pupil becomes lower and as a neighborhood becomes richer the expenditure per pupil becomes higher (T. 2019, V-8).

(dd) In the predominantly white areas of the District of Columbia the annual per pupil expenditures are higher than in the predominantly Negro areas of the city (T. 2223, V-13, V-14).

(ee) Predominantly Negro elementary schools in Southeast Washington spend less per pupil than the predominantly white elementary schools in Northwest Washington (T. 729, 1997-98, V-1, F-1).

(ff) In the 1965-'66 school year in elementary schools servicing areas where the median family income range was \$12,000.00 or more, the average per pupil expenditure was \$400 (T. 724, F-2, V-8).

(gg) In the 1965-'66 school year in elementary schools servicing areas where the median family income range was \$3999.00 and less, the average per pupil expenditure was \$309 (T. 724, F-2, V-8).

(hh) There is a lower utilization of classroom space in the upper cost schools than in the lower cost schools in the District of Columbia (T. 3892).

(ii) There is lower pupil-teacher ratios in high cost schools than in low cost schools in the District of Columbia (T. 3892).

(5) Optional Transfer Zones

(a) An optional transfer zone is defined as one

whose residents can elect to send their children to one of several schools (T. 153).

(b) The primary purpose of optional transfer zones after desegregation was to separate white from Negro students (T. 2980-81).

(c) The optional transfer zone between Dunbar and Western Senior High Schools was created to give white families in the southwest redevelopment area, a predominantly white residential area, an opportunity to avoid sending their children to a predominantly Negro school (T. 153, 546, 550, 2983-84, N-4a).

(d) An optional transfer zone that once existed between Frances and Gordon Junior High Schools was created for the same purpose (T. 2985-86).

(e) The optional transfer zone between Wilson, Western and Roosevelt High Schools was created in 1954 to give white children an opportunity not to attend Roosevelt High School which was fast becoming a predominantly Negro school (T. 2846, 2956-8).

(f) As of October 1965, the following senior and junior high schools had the indicated number of white and Negro students:

(i) Wilson Senior High School, 1287 white and 87 Negro children;

(ii) Western Senior High School, 627 white and 696 Negro Children;

(iii) Deal Junior High School, 1154 white and 14 Negro children;

(iv) Gordon Junior High School, 506 white and 447 Negro children (T. 2847, P-4).

(g) Prior to May 27, 1966, an optional transfer zone existed between Western and Wilson Senior High Schools and between Deal and Gordon Junior High Schools (T. 151-2, 162-72, 2848-49, N-4-8).

(h) The optional transfer zones between Wilson and Western Senior High Schools and between Gordon and Deal Junior High Schools were eliminated on May

26, 1966, because of charges made by Sterling Tucker, the Executive Director of the Washington Urban League, that they made it possible for white children to elect not to attend schools that had a high percentage of Negro students (T. 153-54, 170-71, 2849-51, 2856, N-4-A).

(i) As of October 1965, Dunbar Senior High School had 1508 Negro and 3 white students and Ballou Senior High School had 1097 Negro and 344 white students (T. 2351, P-4).

(j) An optional transfer zone between Dunbar and Ballou Senior High Schools existed prior to May 27, 1966 (T. 155, 2853, N-4-A).

(k) The optional transfer zone between Dunbar and Ballou Senior High Schools was eliminated on May 27, 1966, and a new optional transfer zone created between Dunbar and Western Senior High Schools (T. 156, 2853-4, N-4-A).

(l) As of October 1965, Western Senior High School had 696 Negro and 527 white students and Dunbar Senior High School had 1508 Negro students and 3 white students (T. 2854, P-4).

(m) After the establishment of the optional transfer zone between Western and Dunbar Senior High Schools, all of the white students living in the optional transfer zone who have exercised their election have gone to Western Senior High School (T. 2855).

(n) After Sterling Tucker's charges concerning the racial aspects of the Western-Wilson, Gordon-Deal optional transfer zones were made, white parents complained to the school authorities as to any contemplated change with reference to these zones (T. 2856-58).

(o) Deal Junior High School has always operated around capacity (T. 2860, 2878).

(p) Gordon Junior High School has been an open school, or one which was operating so under capacity that students from overcrowded schools in other zones

could attend it, since at least 1953 (T. 2861).

(q) Gordon Junior High School has been an operating under capacity since at least 1958 (T. 2860-61, 2878).

(r) After the creation of the Gordon-Deal optional transfer zone, the flow of optional traffic was from the Gordon area to the Deal area (T. 2862-64).

(s) After the opening of Backus Junior High School in 1962, an optional transfer zone was created between that school and Paul Junior High School (T. 2865).

(t) As of October 1965, Backus Junior High School had 1223 Negro and 33 white students and Paul Junior High School had 1019 Negro and 136 white students (T. 2865, P-4).

(u) The traffic flow in the optional transfer zone area was to Paul rather than to Backus Junior High School (T. 2866).

(v) The purpose of the Paul-Backus optional transfer zone was to keep white students in Paul Junior High School (T. 2867).

(w) At one time there was an optional transfer zone between Hearst and Powell Elementary Schools in order to permit children living west of 16th Street to go to the predominantly white Hearst Elementary School (T. 3053).

(6) Reading and Speaking Abilities

(a) Children who know a particular idiom rather than standard English read better with books written in that idiom rather than with those written in standard English (T. 6153-4, 6295C, 6296).

(b) Pupil reading ability is better in high cost schools than in low cost schools (T. 6307-8; 118).

(c) It would be better to have children who have not had the stimulus of learning standard English at home placed in schools with children who have had

such stimulus and who do speak standard English (T. 6386-7).

(d) 67.2% of the elementary school pupils read at grade level at Grade 3, while 37.3% read at grade level at Grade 4 (T. 243, A-3, at 27).

(7) Dropouts

(a) In General

(i) A dropout, according to the school system, is a student who has left school for any reason before graduating from high school (T. 515).

(ii) There is a higher ratio of dropouts among Negro than among white students (T. 523, A-3).

(iii) The majority of dropouts have been from the special academic and basic tracks (T. 526).

(iv) In the school year 1960-61, 1069 or 0.9% of the total school population dropped out for lack of interest (T. 736, C-1, C-2, V-5).

(v) In the school year 1964-'65, 1965 or 1.4% of the total school population dropped out for lack of interest (T. 736, C-1-2, V-5).

(vi) In the school year 1960-'61, 188 of the total school population dropped out because of institutionalization (T. 736, C-1-2, V-5).

(vii) In the school year 1964-'65, 522 of the total school population dropped out because of institutionalization (T. 736, C-1-2, V-5).

(viii) In the school year 1960-'61, 13 of the total school population dropped out for mental incapacity (T. 736, C-1-2, V-5).

(ix) In the school year 1964-'65, 0 of the total school population dropped out for mental incapacity (T. 736, C-1-2, V-5).

(x) In the school year 1960-'61, 245 of the total school population dropped out for economic reasons other than employment (T. 736, C-1-2, V-5).

(xi) In the school year 1964-'65, 327 of the total school population dropped out for economic reasons other than employment (T. 736, C-1-2, V-5).

(xii) During the past five school years, there have been 18,099 (53%) dropouts and 15,970 (47%) high school graduates (T. 737, C-1-2, V-5).

(b) Lorton Youth Center

(i) Dr. Alfred E. Simons duly qualified as an expert in the field of educational psychology with particular reference to school dropouts (T. 1478-9).

(ii) The Youth Center, Department of Correction for the District of Columbia is at Lorton, Virginia (T. 539a).

(iii) It maintains a school for inmates (T. 539b).

(iv) There is no track system at the Lorton Youth Center (T. 1550, 1620).

(v) Inmates entering the Lorton Youth Center are given two group aptitude tests, namely, the Otis Self-Administering Test of Mental Ability (a verbal test) and the Revised Beta Examination (a non-verbal test) (T. 1585).

(vi) The Otis Self-Administering Test of Mental Ability which was administered at the Lorton Youth Center had not been localized to the conditions prevailing at that institution (T. 1617).

(vii) The average I.Q. obtained on the revised Beta examinations, non-verbal tests, administered to Washington, D.C. school dropouts confined at the Lorton Youth Center was 98, 20 points higher than that achieved by the same students on the Otis Self Administering Test of Mental Ability, a verbal test (T. 1491-92, 1595, 3561, A-3, p. 43, L-10).

(viii) In almost every instance, the inmates at the Lorton Youth Center who were administered non-verbal tests scored considerably higher than they did on verbal tests (T. 1489-1493, A-3, p. 43).

(ix) The Stanford Achievement Test, an achievement test, was administered to the inmates entering the Lorton Youth Center (T. 1499, 1587).

→ (x) The same test administered one year later indicated that the range of scores had gone from 1.5 to 10.2 to 2.5 to 12.0 (T. 1500-01).

→ (xi) During the same period the average reading level had risen from 6.9 to 8.2 (T. 1501, C-10).

(xii) The results of the Lorton Youth Center study were brought to the attention of the school system (T. 1552-54).

(8) Performance on Armed Forces Qualifying Test (AFQT)

(a) The Armed Forces Qualification Test is an examination administered by the Surgeon General's Office of the Department of the Army to every person entering or being considered for entry into all branches of the Armed Services (T. 6644).

(b) The highest failure rate among Negroes on the Armed Forces Qualification Test (AFQT) occurred in the District of Columbia, South Carolina, Mississippi, North Carolina, Tennessee, Louisiana, Virginia, Alabama, Georgia, Arkansas and Florida (T. 6647, A-34a, A-38).

(c) The Armed Forces Qualification Test consists of 100 questions in each of four areas, namely, vocabulary, arithmetic, special relationships and tool identification (T. 6659, A-41).

9. The Model School Division

a. Origin

(1) In June, 1964, the Board of Education was asked to authorize and did authorize the establishment of the Model School Division, a cluster of 18 elementary and junior high schools around the Cardozo High School, all of which are predominantly Negro (T. 467, 470, 475, A-3, p. 69, S-3).

(2) The Model School Division was not established until 1965 (T. 474, A-3, p. 69).

(3) An advisory committee for the Model School Division under the chairmanship of Hon. David L. Bazelon, Chief Judge of the Court of Appeals for the District of Columbia was subsequently organized (T. 475).

b. Goals

(1) The main purpose of the Model School Division was to develop programs that might be useful throughout the entire school system (T. 477, A-3, p. 69).

c. Accomplishments

(1) The urban teaching internship program is the only such that has been presented to the Board of Education (T. 478-9, S-1).

(2) The Model School Division program has been severely criticized by Judge Bazelon and others for its failure to achieve its goals (T. 481, A-3, p. 70).

(3) The Model School Division Program has been virtually a total failure (A-3, p. 72).

10. Vocational Schools

a. Number

There are five vocational schools (T. 130, A-3, p. 24).

b. I. Q. Requisite

An Intelligence Quotient of 90% is required for admission to a vocational school (T. 33, 929-30, 651, C-14).

c. Capacity

(1) Four of the vocational schools are operating over-capacity (A-3, p. 24).

(2) Many applicants are refused admittance because of the lack of classroom and training space (A-3, p. 24).

d. Racial Discrimination

School placement officials are indifferent to racial discrimination by prospective employers of vocational school graduates (A-3, p. 26).

11. Educational Philosophy.

a. Neighborhood School Concept

(1) The neighborhood school concept originated more than a century ago (T. 5085).

(2) The elementary, junior and senior high schools operate on a neighborhood school boundary system (T. 130, N-7a, 7b).

(3) In the construction program of the District of Columbia public school system the neighborhood school concept takes priority over the factor of integration (T. 3725-6).

(4) Since 1956, the year when the elementary school boundaries were established, a school has never been built outside thereof (T. 3728-29).

(5) Private schools in the District of Columbia have students who live greater than a half-mile away from the institution concerned (T. 3732-3).

b. The Track System

(1) Origin and Initiation

(a) On May 17, 1954, there were approximately 64,000 Negro and 41,000 non-Negro students in the public school system (T. 369).

(b) Desegregation of the public school system took place in September, 1954.

(c) After desegregation, white parents complained to the Board of Education regarding integration of the public schools (T. 376).

(d) Prior to September, 1954, city-wide ability and achievement testing was limited to Division One schools (T. 369).

(e) Prior to that date, there were random ability,

and achievement testings in the Division Two schools (T. 369).

(f) In 1955, special ability and achievement tests of all students in the public school system were conducted (T. 373).

(g) These tests indicated that the achievement levels in the former Division Two schools were noticeably below those of the former Division One schools (A-3, p. 34).

(h) The track system was developed during 1955 by Dr. Hansen, then Assistant Superintendent of Schools for the Senior High Schools (T. 226, 376-7, A-3, p. 33).

(i) One of the factors responsible for the institution of the track system was the decision of the United States Supreme Court in Bolling v. Sharpe, *supra* (T. 236), and the results of the special testing program (A-3, p. 34).

(j) The Board of Education approved the tenth grade track system in the spring of 1956 (T. 226, 377).

(k) The development of the tenth grade track system began after the city-wide special testing had been completed in 1955 (T. 378).

(l) In the main, the city-wide testing in 1955 showed a great disparity between Negro and white pupil achievement in that the former tested substantially lower than the latter (T. 379-80).

(m) In the tenth grade track system of 1956, the numbers of Negro pupils in the basic track was considerably more than the number of white pupils (T. 380-82).

(n) At the same time, the number of white pupils in the honors track was considerably more than the number of Negro pupils (T. 381).

(o) In 1957, the track system was extended to the 11th grade (T. 226).

(p) In 1958 it was extended to the 12th grade (T. 226).

(q) By the school year 1959-60, the three-track system had been introduced into the elementary and junior high schools (T. 227).

(r) The track system proposal emanated from a committee of principals and subject supervisors working under the direction of Superintendent Hansen. It was originally submitted to the Board with only Dr. Hansen's favorable recommendation and without any objective or contrary memoranda or studies (T. 977-8, 985, A-3, p. 7).

(s) All extensions of the track system throughout the public school system were accomplished in the same manner (T. 978, A-3, p. 7).

(t) The Board of Education has never given independent and objective study to the track system or to any critics thereof (T. 978-9, A-3, p. 7).

(u) Prior to December, 1965, the Superintendent of Schools never indicated to the Board of Education that there was considerable opposition to the track system from other school systems (T. 975).

(2) Description

(a) In General

(i) A four-level curriculum organization is maintained for the senior high schools (T. 207).

(ii) A three-level curriculum organization is maintained for the junior high schools and the elementary schools (T. 207).

(iii) These curriculum organizations are referred to by the generic term "the track system" (T. 226, B-11).

(iv) The three-track curriculum is divided into: (aa) honors, (bb) general, and (cc) special academic (basic) (T. 227, B-2).

(v) The four-track curriculum is divided into: (aa) honors, (bb) regular, (cc) general, and (dd) special academic (basic) (T. 227-228, B-3).

(vi) Children are placed in their assigned track in the middle of the fourth grade (T. 242).

(vii) In the 1963-4 year, 82%-85% of the students at Dunbar Senior High School, a predominantly Negro school servicing an area where the median family income is \$3872, were in the special academic and general tracks and there was no honor track available (T. 720-1, V-2, A-3).

(viii) In the 1963-4 school year, 92% of the students at Wilson Senior High School, a predominantly white school servicing an area where the median family income was \$10,374, were in the honors and regular tracks and there was no special academic track available (T. 721, V-2, A-3).

(ix) In 1965 in the Deal Junior High School, a predominantly all-white school, there were no special academic curricula (T. 340-1, B-5).

(x) The lower the percentage of Negroes in a particular school, the fewer the number of students in the lower two tracks (T. 1154, 1201, B-16, 17, T-2).

(xi) In 1962 the following numbers of students were in the various tracks:

Basic track:

Elementary	2810	(3.8%)
Junior high schools	4218	(15%)
Senior high schools	1799	(12.6%)

General track:

Elementary	69,908
Junior high schools	22,000
Senior high schools	6,455

Regular track:

Senior high schools	4,608
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Honor track:

Elementary schools	1,269
Junior high schools	1,722
Senior high schools	1,403

(T. 1030-31)

(xii) As of October 21, 1965, there were 107 white and 2388 Negro elementary school pupils in the special academic track (T. 255, B-4).

(b) Junior Primary

(i) The junior primary class is an intermediate step between kindergarten and first grade for children who, according to the Washington, D.C. public school system, are not ready for first grade work (T. 229, 4030-31).

(ii) The students in the junior primary grade are those who, according to the school system, are maturing at a very slow rate (T. 230).

(iii) One of the criteria as to whether a kindergarten child is to be placed in the junior primary curriculum is his performance on the Metropolitan Reading and Writing Test, which is given in May of the school year (T. 4069-70).

(iv) The junior primary grade is a track (T. 1810).

(c) Special Academic

(i) A child's achievement on an intelligence test is one of the facts taken into consideration for placement in a special academic track (T. 3108).

(ii) An I.Q. score of 75 is the cut-off point in the public school system between the special academic and the general tracks (T. 6046).

(iii) The special academic track in elementary schools is ungraded (T. 6209).

(iv) Special academic classes contain mentally retarded and emotionally disturbed pupils (T. 399, 935, 4037-8, 6054-5, 6206, A-13).

(v) The textbooks used in the special academic classes in the elementary schools are less advanced than those used in other curricula (T. 6107-6114, 105-116).

*challenged
Test 1
factor*

challenged

*unless
agreed* (vi) Pupils in the special academic track in the elementary schools are transferred to the special academic track in the junior high schools automatically upon reaching the age of fourteen (T. 1050-51, 6212, 10).

(vii) Senior high school students in the special academic track must complete 16 Carnegie units of which 10-1/2 are prescribed (T. 348).

*must
be
reevaluated
38
info* (viii) In September, 1965, a crash program was instituted to reevaluate 1273 pupils in the public school system who had been assigned to or were being considered for placement in the special academic track without an individual psychological test (T. 390-6, 1928, 6051, A-3, p. 36).

(ix) After such testing, it was discovered that only 441 belonged in the special academic track (T. 396, A-3, p. 36).

(x) As of October 22, 1964, 3.9% of all elementary school pupils were in the special academic track; 14.4% of junior high school pupils and 9% of senior high school pupils were in the special academic track (T. 1237, C-14).

(xi) There are more Negroes, percentagewise, in the special academic track than whites (T. 3107, B-4-5, P-20).

(xii) The teachers in the special academic track are temporary teachers (T. 539F).

(xiii) Some children in the special academic classes have not been tested for as much as five or six years (T. 940, A-13).

(xiv) Some special academic classes do not have textbooks (T. 1050, 1059, 1065-66).

(xv) The special academic curriculum varies from school to school (T. 1069B).

(d) General Track

(i) To qualify for the general track, a student must have an I.Q. of at least 75 (A-3, p. 37).

(ii) Senior high school students in the general track must complete 16 Carnegie units of which 7-1/2 are prescribed (T. 347).

(e) Regular Track

(i) To qualify for the regular track in the senior high schools, a student must have an I.Q. of at least 120 (A-3, p. 38).

(ii) Senior high school students in the regular track must complete 16 Carnegie units, of which 13-1/2 are prescribed (T. 343).

(f) Honors Track

(i) To qualify for honors in the elementary and junior high schools, a student must have an I.Q. of at least 120 (A-3, p. 38).

(ii) To qualify for honors in the senior high schools, a student must have an I.Q. of at least 130 (A-3, p. 40).

(iii) Senior high school students in the honors track must complete 18 Carnegie units of which 16-1/2 are prescribed (T. 343).

(iv) In the 1965-66 school year, 84% of the Negro school population attended schools without honors tracks (T. 725, V-10, P-4).

(v) In the 1965-66 school year, 30% of the white school population attended schools without honors tracks (T. 725-6, V-10, P-4).

(vi) The greater the percentage of Negro students in a particular school, the smaller the number in the honors track thereof (T. 2, 1153, 1201, 6094, B-16, 17).

(vii) The majority of predominantly Negro elementary schools do not have honors tracks (T. 1253-4, B-4, P-4).

(g) College Preparatory

(i) Dr. Elias Blake, Jr. duly qualified as an expert in the field of educational psychology (T. 1103).

(ii) Students in the general and special academic tracks generally do not go to college (T. 1157-58, B-18).

(iii) Students in the honors track have a greater opportunity to enter the better American colleges and universities than do those in the regular track (T. 345-6).

(iv) In the Washington, D.C. school system a smaller percentage of Negroes from predominantly Negro schools enter four-year colleges than white students or Negro students from integrated schools (T. 1159-60, B-18).

(v) 88.9% of the 1965 high school graduates in the honors track entered four-year colleges (T. 1843).

(vi) 62.7% of the 1965 high school graduates in the regular track entered four-year colleges (T. 1843).

(vii) 2.9% of the 1965 graduates from the special academic track entered four-year colleges (T. 1842).

(viii) As of October 2, 1964, 41.4% of the pupil population of the senior high schools were in the college preparatory track and 58.6% in the non-college preparatory track (T. 1238-39, C-15).

(ix) The following percentages of 1965 senior high school graduates continued their education on a full or part-time basis:

Honors	92.9%
Regular	76.8%
General	31.6%
Special Academic	13.5%

(T. 348-9, T-2).

(3) Testing

(a) In General

(i) Dr. Roger T. Lennon duly qualified as an expert in the area of educational and psychological testing (T. 3151).

(ii) Dr. John T. Dailey duly qualified as an expert in the field of achievement and aptitude testing (T. 6244).

(iii) Dr. Marvin G. Klein duly qualified as an expert in the field of social psychology, particularly in the sub-division of testing (T. 1325).

361

(iv) All test scores contain a measurement of error and are not perfectly reliable (T. 3182-3).

(v) Non-verbal tests are those which are free of dependence upon verbal content (T. 3185).

(vi) The purpose of administering a non-verbal test is to not handicap examinees with verbal shortcomings (T. 3230-1).

361

Contested
as the
exception,
not rule

(vii) Some examinees, who perform poorly on verbal tests do relatively better on non-verbal tests (T. 3231).

361
only
group
tests

(viii) Of the tests given in the District of Columbia public school system, all are verbal with the following exceptions: (a) The Tests of General Ability may contain some non-verbal components; (b) the Differential Aptitude tests include one non-verbal component; (c) the Flanagan Aptitude Classification tests include several non-verbal components (T. 3233-4).

(ix) Individual testing is done only at the request of the Principal (T. 309).

(x) The ability of a child to read well affects his I.Q. score (T. 6272).

(xi) Children of low income parents score lower on verbal tests than those from higher income families (T. 6274-5, 6296-7).

(xii) Negro ghetto children speak a different dialect than standard English (T. 6281-2).

(xiii) Standard Aptitude and achievement tests are written in Standard English (T. 6283).

(xiv) Children who don't understand standard English score lower on such tests than children who do (T. 6283-86).

362 hypo question (xv) Children who do not understand standard English score higher on achievement and aptitude tests written in their own dialect than they do on those written in standard English (T. 6283-4, 6295-95A).

(xvi) The difference between the idiom of the child and the language of the test which is administered to him is a factor affecting the test results (T. 6043).

362 (xvii) Generally low-income Negro children score lower on these group achievement and ability tests than middle-income ~~or~~ white children (T. 1107).

362 (xviii) Test scores for minority group children may have meanings different from those of non-minority group children, even when they are numerically the same (T. 3454).

363 Not fair sample (xix) The distribution of test scores of pre-school Negro children from low-income families in the District of Columbia is the same as those of middle class white pre-school children from high income families of the University of Minnesota (T. 1369).

No basis in record (xx) The performance on standardized tests of aptitude and achievement by a school population 90% or more of which was composed of Negroes, 50% of whose families had an annual income of \$6000 or less, would be below the national average (T. 3407).

(xxi) These pupils would average at least 7 points lower in intelligence quotients than the national norm (T. 3409).

wrong the norm will rise if the norm were rising (xxii) The greater percentage of Negro-white interaction in school populations, the greater probability that these children will perform better or higher on standard achievement tests (T. 1769).

(xxiii) The two main purposes of achievement

tests are (a) to determine how well a particular school system, and (b) how well an individual student is doing (T. 3338-39). *(c) predict performance*

(xxiv) Standardized achievement or aptitude tests are not valid for all pupil populations (T. 3349).

can't generalize

(xxv) The tests being administered to disadvantaged children do not give the information upon which it is appropriate to make a remedial, diagnostic or educational curriculum for these children (T. 965, 1719, 1777-8, 1781-2).

disagrees 368

(xxvi) Feelings of inadequacy on the part of low-income Negro children generated by their environment are not a debilitating factor in the beginning of their school careers (T. 1734).

No record 365

(xxvii) A negative attitude toward schooling on the part of the low-income Negro child is generated by child's experience in school (T. 1736, 1787-8).

(xxviii) There is a higher incidence of test anxiety among culturally disadvantaged children than in other groups of children (T. 3280).

overstated 366

(xxix) Teachers are influenced by the known I.Q. of any of their students (T. 3659-70).

No basis in record

(b) Individual

(i) Individually administered I.Q. tests should not be used as a factor in evaluating the educational skill of a child within a functioning school system (T. 1828).

If educ. skill = innate ability but it doesn't

(c) Group

367

(i) A group test is defined as a test that a single administrator can give to any number of individuals (T. 1352).

(ii) Low income Negro children taking such tests cannot be expected to measure up to the same standard as the white middle-income children who formed the standardization group (T. 1113-14).

(iii) The difference in the group test scores between Negro and white children does not indicate any

innate inferiority of superiority (T. 1115-16).

(iv) The quality of the formal education had by the child prior to taking a standardized group test affects his performance on the test (T. 1118).

(v) In judging the quality of such education, one would have to consider that of the teacher, the necessary material, the school's positive environment and the heterogenous nature of the school population (T. 1120-22).

(vi) The economic condition of children taking standardized group tests given by the District of Columbia would affect their results on such tests (T. 1126-27).

(vii) There is a direct ratio between educational achievement and economic status in the school system (T. 1130-31, B-12, 13, 14).

(viii) Negro children from low income families in the District of Columbia who have entered the public school system scored below average on the appropriate group tests (T. 1369, 1712).

(ix) This deterioration is due to the unique pressures on disadvantaged children in the school system and the teachers' expectations of their performance in both testing and classroom situations (T. 1375-76).

(x) The disadvantaged child has a greater test anxiety than the non-disadvantaged child (T. 1378-1380).

(xi) Distribution of achievement scores for low-income Negro students is below that of middle-income white students (T. 1384).

(xii) The performance of all of the children of the public school system on achievement and aptitude are reckoned against the national norms (T. 1396).

(xiii) Test scores on aptitude and achievement tests are affected by the fact that a school is predominately populated by one race or another (T. 1401).

No
basis
in
record
367

No
record
against
368

(xiv) The performance on standardized group aptitude tests is influenced by many factors other than hereditary intelligence (T. 3166-67).

(xv) Achievement tests seek to measure a student's progress toward a set goal of instruction (T. 3170).

(xvi) Aptitude tests seek to predict the pupil's progress toward a set goal of instruction (T. 3170).

(xvii) Scholastic aptitude tests seek to measure a child's ability to reason (T. 3174).

*inter
alia*

(xviii) The scholastic aptitude tests given by the public school system are as follows:

- A. Metropolitan Readiness Tests (Kindergarten)
- B. The School and College Ability Tests (Grade 4)
- C. The Tests of General Ability (Grade 6)
- D. The Tests of General Ability (Grade 7)
- E. The Differential Aptitude Tests (Grade 8)
- F. The Tests of General Educational Ability (Grade 9)
- G. The School and College Ability Tests (Grade 9)
- H. The School and College Ability Tests (Grade 11)
- I. The Tests of General Ability (Grade 11)
- J. The Flanagan Aptitude Classification Test (Grade 10 or 12)

(T. 3176, B-10)

(xix) The various scholastic aptitude yield intelligence quotient, (b) a percentile band, (c) a percentile range, or (d) stamime units (T. 3177-81).

(xx) Fourth grade pupils are administered group mental ability and achievement tests (T. 238).

(xci) In 1965-66 the mental ability test was the Otis Mental Ability Test and the achievement test was the Sequential Test of Education Progress (STEP) (T. 238, 259, B-10).

Wrong

(xci) All sixth graders are given standardized mental ability and achievement group tests in late February or early March of each year (T. 305).

(xxiii) Sixth graders in the special academic tracks take different standardized mental ability and achievement group tests than those in the other tracks (T. 305, B-10).

(xxiv) In the 1965-1966 school year, sixth graders in the special academic track took the Test of General Ability (TOGA) and the Metropolitan Achievement Test (T. 258, 306, B-10).

(xxv) In the 1965-66 school year, sixth graders in the other tracks took the Stanford Achievement and the Otis Mental Ability Tests (T. 262-3, 305, B-10).

(xxvi) The group tests given in the sixth grade are one of the factors determinative of what track students are placed in when they enter junior high school (T. 264).

(xxvii) In the ninth grade, all pupils except those in the special academic track are given the Sequential Test of Educational Progress (STEP) and the School and College Ability Test (SCAT) (T. 334, B-10).

(xxviii) In the ninth grade, pupils in the special academic track are given the Stanford Achievement Test, Intermediate Partial Battery Form W and the Test of General Ability (TOGA) (T. 334, B-10).

(xxix) All senior high school students except those in the special academic track are given the STEP and SCAT tests in April of the eleventh grade (T. 351-2, B-10).

(xxx) The special academic students are given the Stanford Achievement Test, Advanced Partial Battery Form W and TOGA for grades nine and eleven in April of the eleventh year (T. 351-2, B-10).

There are other factors than school, esp. home (xxxi) By the time low income children have reached the second grade they have fallen half a year behind the academic levels of the middle-income children as measured by tests administered by the public school system (T. 1727, 1785-6).

(xxxii) The low-income Negro children in the sixth

grade are between two or three years behind the middle-income children as measured by tests administered by the school system (T. 1727).

(xxxiii) The practice of administering the Otis Test for Mental Ability to a school population similar to that of Washington, D.C. is both indefensible and dangerous (T. 1506, C-10, p. 30). *Our society has much to require standard English skills*

(xxxiv) All group tests are not perfectly reliable (T. 3483).

(xxxv) Because of this unreliability the concept of "percentile band" has come into operation (T. 3483).

(xxxvi) Of the tests used in the District of Columbia only the Sequential Test of Educational Progress (STEP) and the School and College Ability Test (SCAT) employ percentile bands as the recommended form for interpretation of their results (T. 3485, B-10).

(xxxvii) All of the group tests are verbal tests. (T. 259). *wrong 369*

(xxxviii) The teacher's expectation of a child's performance in her classroom is affected by her knowledge of his intelligence quotient (T. 1408-1412, 1789-91). *denied as without record*

(d) Test Standardization

(i) In General

(aa) Standardized group tests determine the position that an individual taking such tests bears to a standard that has been established for that particular test (T. 1017-18).

(bb) Such tests, which have been standardized on groups which are not comparable to the group being measured do not result in valid test scores (T. 1018-19).

(cc) Race has not been included as one of the elements of standardization of group aptitude and achievement tests (T. 3240-1). *Not significant factor*

(dd) Standardized group tests given to students in the school system are standardized on groups which do not include a representative number of low-income Negroes (T. 1108, D-10).

(ee) The group tests that are given to students in the school system are generally standardized on predominantly white middle-income groups (T. 1108, 1233-34, 1357, B-10).

(ff) The norm or standard of these tests is established by averaging a range of scores of the standardization group (T. 1109-10).

(gg) These scores are expressed in a variety of ways including grade or percentiles (T. 1111).

(hh) With all of the standardized group tests used in the school system, the standardization group, while not 100% white, was predominantly white (T. 1113).

(ii) The standardization group for tests published by Harcourt-Brace, Inc. included from 5-7% of Negroes (T. 3416).

(jj) In standardizing the Metropolitan Achievement Test, the following numbers of Negro pupils from the Southern states were used: (i) Alabama, 852; (ii) Florida, 508; (iii) Kentucky, 419; (iv) Louisiana, 1195; (v) Maryland, 655; (vi) North Carolina 1765; (vii) Oklahoma, 27; (viii) South Carolina, 2648; (ix) Texas, 101; (x) Virginia, 832. (T. 3420).

(kk) The Otis Quick-Scoring Test was standardized in 1937 and the standardization checked and approved in 1954 (T. 3371).

(ll) Supplementary tables were issued by Harcourt-Brace, Inc. on data obtained in 1963 at the time of the standardization of the Stanford Achievement Test for use by school systems anxious to have more current information (T. 3369-3371).

(mm) The school system has not asked for the 1963 Stanford material (T. 3371-72).

(nn) The standardization of group aptitude and

achievement tests is made on a predominantly white, middle-class population (T. 3390).

(oo) Pupil populations similar in characteristics to the standardizing group would ordinarily approximate the test score norms established by the standardizing group (T. 1358-59).

(pp) On the other hand, pupil populations atypical to the standardizing group would be expected to score differently than the standardizing group (T. 1359-60, 6295B). not
true
}b

(qq) The total number of pupils in the Metropolitan standardization population was approximately 350,000 (T. 3420).

(rr) The total number of Negroes used in the United States in the Metropolitan standardization group was approximately 18,000, or slightly over 5% of the total (T. 3421).

(ss) The 1960 census figures for the United States in the ages indicated are as follows:

- A. 5-9 18,692,000 of whom 2,391,000 are Negro
- B. 10-14 16,773,000 of whom 1,973,000 are Negro
- C. 15-19 13,219,000 of whom 1,497,000 are Negro

(ii) National Norms

(aa) A national norm is the median score in a particular test administered to a theoretically representative standardization group throughout the country (T. 3330-37).

(bb) The greater the economic deprivation of students the greater the average downward deviation from the national norm (T. 3423).

(cc) It is dangerous to use relationship to national norms in order to gauge the scholastic treatment of individual children (T. 1832).

(dd) Where national norms are used exclusively, the students in the pupil population being tested are being gauged against the national test group (T. 3493).

(ee) The use of an I.Q. score as a factor in determining pupil group separations is not valid for Negroes because the tests which furnish such scores are standardized on a middle-class white population (T. 965).

(ff) The test scores of a pupil population which was as near as possible the equivalent of the test standardization group would approximate the norms established for the latter group (T. 3426).

(gg) The test score of a pupil population which varied substantially from the test standardization group would be correspondingly different than the norm established for the latter (T. 3427).

(iii) Local Norms

(aa) A local norm is defined as the median score in a particular test administered in one school system (T. 3330).

(bb) A local norm relation to group achievement and aptitude tests is ordinarily a systemwide norm (T. 6677).

(cc) Local norms, in order to have any validity, must be standardized on the local school community ~~(T. 3~~

(dd) Local instead of national norms can be established for all group aptitude achievement tests (T. 3488-89, 91).

(ee) There is no reason why this could not be done for the District of Columbia (T. 3489).

(ff) Local and special type norms are valuable where the pupil population of a particular school system is considerably different than the standardization group (T. 6295C).

(gg) The more atypical the pupil population to which standardized tests are administered, the more desirable the establishment of local norms (T. 3492).

(hh) When local norms are used, pupils being

tested are being gauged against the local school population (T. 3493).

(il) The cost by Harcourt-Brace, Inc. for the production of local distributions and local percentile norms for any school system would be 9¢ per pupil (T. 3507).

(jj) Harcourt-Brace, Inc., guarantees a three-week delivery system on such local distributions and local percentile norms (T. 3508).

(kk) Harcourt-Brace, Inc. has been asked by other school systems to establish such local norms (T. 3509).

(ll) Some city school systems, including Philadelphia, Seattle and Cleveland, have created their own group tests (T. 3510).

(mm) It is desirable for the public school system, because of the ethnic origin and economic condition of the pupil population, to use local norms in order to achieve a greater predictability (T. 3522).

(nn) The public school system has never requested Harcourt-Brace, Inc. to provide local norms for any of the standardized tests published by that company (T. 3495).

(4) Placement

(a) Until September of 1965, no parental consent was required for special academic placement (T. 321, 3112).

(b) Since September of 1965, almost no parents have voiced an objection to such placement (T. 323).

(c) Lack of dissent by the parents is construed as concurrence in special academic placement (T. 325).

(5) Inflexibility

(a) An ability grouping system that is rigid in not allowing children to move from one curriculum to another is pedagogically and socially bad (T. 1434).

denied
370

of the child's educational life (T. 981-2).

(i) The track system discriminates against the student from the lower socio-economic levels of society (T. 982-3).

(j) The track system is tantamount to segregation according to race (T. 984).

(k) The track system discriminates against Negro children (T. 966).

(l) The track system gives students a feeling of inability and a lack of recognition (T. 1069F).

(7) Other School Systems

*challenged
new*
(a) New York City is the only other school system that has curriculum tracking similar to that of Washington, D.C., but it is limited to certain schools only (T. 1431-2, 1689, A-3, pp. 103-119, A-21).

c. Integration

(1) Recommendations were made to the Board of Education of the District of Columbia in June of 1964 to adopt a policy stating that integration of the public school system was a goal in and of itself and to appoint a special advisory committee on problems of integration therein (T. 1437).

(2) None of the aforesaid proposals was adopted by the Board of Education (T. 1438-39).

(3) The six-year building program of the District of Columbia public school system does not include educational parks (T. 3713-14).

(4) The Washington Integrated Secondary Education (WISE) plan is a plan to stabilize the bi-racial composition of Western High School and Gordon, Jefferson and Francis Junior High Schools (T. 462-3).

(5) Some \$400,000 in impact aid was received by the Board of Education to be used in effectuating the WISE plan (T. 463).

(6) The WISE plan represented the first systema-

tized effort by the District of Columbia public school system to stabilize a bi-racial school population (T. 465).

(7) With the exception of the vocational schools, the Superintendent of Schools has never proposed or ordered any studies into the feasibility of an educational park or parks for the District of Columbia public school system (T. 182).

(8) The Superintendent of Schools has opposed the busing of public school children for the purpose of achieving racial integration (T. 182).

(9) Where busing has been instituted it has been for the sole purpose of utilizing under-occupied classroom space (T. 183).

(10) It is the expressed belief of the Superintendent of Schools that the best educational setting for white as well as Negro children is a bi-racial one (T. 185).

d. The Strayer Report

(1) A study of the Washington, D.C. public school system was made in 1948 under the supervision of Dr. George Strayer, a nationally recognized authority in school administration and a former member of the staff of Teachers College, Columbia University (T. 2228-9, A-16).

(2) A report of this study, known as the Strayer Report, was published in 1949 (T. 2230, A-16).

(3) This survey was financed by a Congressional appropriation of \$100,000 (T. 2230-2231).

(4) The survey was one of the most careful studies ever done of an entire school system (T. 2232).

(5) Most recommendations contained in the Strayer Report were not effectuated by the District of Columbia school system (T. 2234, A-33).

D. The Suburban School Systems

1. The City of Alexandria, Va. (R-9-28)

a. There is a deliberate attempt to spend an equal amount per pupil in the elementary and middle schools (T. 579 B-E, R-13).

b. Each elementary school has a library and a staff of professional librarians (T. 579 K-L, R-21).

c. Each secondary school has a library (T. 579 L, R-22).

d. The following percentages of high school graduates sought higher education in the year indicated:

1963-64	66.3%
1964-65	69.2%
1965-66	61.2%

(T. 579 M, R-23)

e. The high school curriculum is divided into college prep, business education, science-technical and general (T. 579 N).

f. The choice of curricula is made by the pupil, his parents and the guidance counsellor (T. 579 N).

g. No pupil is precluded from entering any desired curricula (T. 579-O).

h. The average age of all school buildings is 20 years (T. 579 P, R-26).

i. Each school building has a cafeteria (T. 579 S).

2. Arlington County, Va. (R-29-42)

a. There is no variance of consequence in per pupil expenditures in the elementary and secondary schools (T. 656, R-31).

b. All of the schools have libraries and professional librarians (T. 657, 665, R-33, 37).

c. An average standard of book distribution among the schools is attempted (T. 658, R-33).

d. The decision as to courses and curricula is normally arrived at by the guidance counsellor, the parent and the student but, provided he has the prerequisites, a student can take any course even against

put sufficient figures

the guidance counsellor's advice (T. 662).

e. There is not a great deal of variance in pupil-teacher ratio (T. 664).

f. Per pupil expenditures are approximately the same throughout the school system (T. 669).

3. Fairfax County, Va. (R-43-54)

a. The dropout rate is 3% or less (T. 675, R-44).

b. Every school has a library and full or part-time professional librarians (T. 677, R-47).

c. Text books are distributed equally among the schools (T. 678, R-47).

d. Although there are groupings, students are permitted to select any curricula they wish (T. 679).

e. The pupil-teacher ratio is the same within the various categories of schools (T. 680, R-50).

f. In the main, the school buildings are slightly more than ten years old (T. 683, R-54).

4. Montgomery County, Md. (R-55-67).

a. There is little variation in annual per pupil expenditure (T. 689, R-57).

b. There is little variation in pupil-teacher ratio (T. 690, R-58).

c. The elementary schools average 28-1 and the secondary schools 23-1 (T. 691, R-58).

d. Each school has a library (T. 695, R-64).

5. Prince George's County, Md. (R-68)

a. The pupil-teacher ratio for the school year 1965-66 was as follows:

Elementary schools	30.3
Secondary schools	28.4

(R. 68, Table 8)

b. The average per pupil cost for the school year 1965-66 was as follows:

Elementary schools	\$414.
Secondary schools	537.

(R. 68, Table 3)

c. The average number of library books per pupil for the school year 1965-66 was as follows:

Elementary schools	5.16 per pupil
Secondary schools	5.57 per pupil
Total per system	5.33 per pupil

(R-68, Table 5)

d. The number of schools with libraries for the school year 1965-66 was as follows:

Elementary schools:

Full libraries	93
Improvised libraries	38

Secondary schools 43

(R-68, Table 9)

e. The average age of school buildings is 17 years (R-68, Table 12).

f. Temporary teachers receive salary increments for 14 years (R-68, Table 10).

g. The number of 1965 high school graduates attending college was 50% (R-68, Table 7).

h. Each student in the school system averages 10 textbooks and one music book (R-68, Table 5).

i. The dropout rate for the year 1964-65 was 1.4% (R-68, Table 2).

E. The Effects of Segregation and Integration by Race and/or Socio-Economic Status

1. In General

a. Dr. James S. Coleman was duly accepted as an expert in the field of educational sociology (T. 853-60, 2136).

b. Dr. Robert Coles duly qualified as an expert in

the field of child psychiatry with an emphasis on the effect on Negro and white children of segregation and desegregation (A-24, p. 14).

c. Segregation by race in a public school system is inherently unequal both from a moral and an educational point of view (T. 5081).

d. In connection with the Negro child's understanding of the world about him that he receives from his parents or from the manner in which his parents are treated the school is completely important (A-24, p. 49). *but not solely*

e. A ghetto school is one that services a segregated population and in particular a Negro segregated population (T. 1407).

f. A predominantly all-Negro school tends to perpetuate the historical status of the Negro which is made known to the Negro child by his parents and the way in which his parents are treated by the white world (A-24, pp. 48-49).

g. Negro children going to school do so with more apprehension than white children (A-24, p. 17).

h. Negro children in predominantly or all-Negro schools which contain predominantly or all-Negro faculties feel isolated and exiled (A-24, p. 37).

i. The opportunity of a low-income child to participate in integrated educational environment is the critical component to produce a meaningful and lasting educational challenge (T. 1422).

j. Heterogenous groupings in schools or school systems constitute one method of overcoming the inequality of the segregated school (T. 5084-5).

k. Heterogenous class groupings are far superior to homogeneous groupings (T. 1621, C-28).

l. A material improvement in services, facilities plant, and pupil-teacher ration in a predominantly Negro school in a lower socio-economic area would not have an extremely substantial effect on its pupils'

- m. An integrated education is desirable (T. 6020).
- n. Integrated faculties and student bodies are pedagogically sound (T. 6163-4).
- o. A Negro child from a lower socio-economic environment placed into a school whose pupil population included students of a higher socio-economic background some of whom were white and staffed by a faculty which included white teachers will achieve more highly on the standard aptitude and achievement tests than he would in a school populated by stereotypes of himself and staffed primarily or exclusively by Negro teachers (Y. 886-8).
- p. Negro children from lower socio-economic environments in old schools without libraries or cafeterias, staffed primarily with Negro teachers will not have an opportunity to achieve much of their potential (T. 882-86).
- q. Children from lower socio-economic backgrounds are more affected by the physical and social characteristics of their school than are children from higher socio-economic backgrounds (T. 885, 891).
- r. School children from lower social and economic environments who are exposed to higher social and economic characteristics will achieve more highly than they would in their own environments (T. 880).

2. Teachers

- a. Integrated faculties are desirable for the teaching of Negro children (T. 5074-75, 6005).
- b. The introduction of white teachers into an all-Negro school with formerly all-Negro teacher creates in the Negro student a feeling that something is being done to bring the outside world into the school system (A-24, p. 38).
- c. White teachers, who are teaching Negro children for the first time, gain new respect for them (A-24, p. 35).
- d. It is educationally desirable to have integrated

faculties teaching the pupil population in predominantly white schools (T. 5076).

e. There is an obligation on public school systems to do everything possible to educate its teachers so that they will understand that they have an obligation to be mobile in order to integrate faculties (T. 5079-80).

Compensatory Education point. Δ denies it is legal obligation 381

3. Pupil Segregation

a. Students in schools in which the majority of the pupil population are both Negro and in the lower median family income grouping, would not achieve as high on standardized aptitude and achievement tests than if they were in different social environments in which the educational and economic backgrounds of their fellow pupils varied considerably from their own (T. 879).

b. Negro children in predominantly Negro schools do not achieve as highly as Negro children in school which is either predominantly white or has a higher proportion of white students (T. 880, A-24, pp. 19-23).

c. Negro children in segregated schools do not receive as good an education as they would in integrated schools (T. 3065-69).

informal education

4. Pupil Integration

a. Negro children in desegregated schools do better psychologically, socially and academically than Negro children in segregated schools (A-24, pp. 24-25, T. 197, 6558-60).

No record

b. The improvement of Negro children who are placed in racially mixed schools is a nationwide characteristic (A-24, p. 26).

c. The entrance of Negro children in formerly all-white schools has not lowered the academic performances of the white children therein (T. 197, A-24, pp. 30-31, 34).

d. Negro children transported from all-Negro areas in order to permit them to attend racially inte-

grated schools do better both academically and psychologically than they had done in their all-Negro schools despite the fact that they had to spend from 40 minutes to an hour in the vehicles transporting them back and forth (A-24, pp. 32-34).

e. Any educational loss suffered by Negro school children who are transferred from a segregated to an integrated school environment is initial and not permanent (T. 5098-99).

It depends on new curriculum 383

F. The Responsibilities of a School System to the Disadvantaged Child

1. In General

a. Dr. George Bernard Brain duly qualified as an expert in the field of educational administration (T. 5020-1).

384

b. It is the obligation of the school to adapt its typical educational arrangements in order to provide the best learning opportunities for the disadvantaged child (T. 5066-67).

c. It is the role of the public school to foster equality of opportunity as well as equality of education (T. 5070-71).

d. There is an educational obligation on public school administrators to desegregate their school systems to the extent possible (T. 5093).

e. It is the obligation of school administrators to provide as many racially-integrated experiences to its children as possible (T. 6001-2).

f. Even where approximately 93% of a school population is Negro, it is possible to develop programs to provide a relationship between the white and Negro students (T. 5094).

g. It is the obligation of school administrators to take all possible steps to achieve racially integrated faculties (T. 5077-80).

2. Educational Parks

a. The Superintendent of Schools has never asked the Board to consider educational parks (T. 975).

b. Some experts in the field of educational parks consider them feasible from every point of view (T. 6007).

c. The various schools contained in educational park systems may be physically separated from each other (T. 6010).

3. Out-of-District Transportation

a. Transporting children from segregated to integrated schools is educationally and psychologically sound (A-24, pp. 31-34).

b. It does not necessitate the loss of any benefits of the neighborhood school (T. 5089-90).

4. Compensatory Education

a. Compensatory education is that increment in educational effort necessary to enable disadvantaged school children to compete more successfully with advantaged school children (T. 5022-21, 5071-2).

b. Compensatory education does not mean segregating disadvantaged children from the rest of the school population (T. 5072).

5. Increased Funds

a. In order to equalize the education of the disadvantaged child with that of the advantaged child more money must be spent for the former than for the latter (T. 6013).

6. Other Programs

a. Team teaching which, in the main, consists of a certain number of teachers instructing a large group of students which is then broken down into sub-groups until the new information is absorbed; it operates with a heterogeneous rather than a homogeneous pupil population (T. 972-3, 1178-86).

b. The Superintendent of Schools has never asked the Board to consider team teaching (T. 975).

*Dr. Haynes
Kien*

c. The Board of Education has been asked by members of the community to adopt the modern techniques of team teaching as an alternative to an inflexible track system (T. 974).

Are experimenting d. The school system has not employed team teaching (T. 974).

e. The lowering of the pupil-teacher ratio is directly related to gains in educational achievement (T. 5031).

f. An effective way to prevent the flight of white students to parochial or suburban schools is to improve the quality of the educational system from which they are fleeing (T. 5094, A-3, p. 21).

g. Cooperative arrangements with adjacent school systems and private and parochial schools can provide an interracial relationship for both white and Negro students (T. 5094).

G. Summary

1. Pupil Segregation

a. Negro children and those from the lower socioeconomic groupings are segregated in the Washington, D.C. public school system.

b. In the main, this segregation results from:

- (1) a rigid adherence to the "neighborhood school" concept;
- (2) the discriminatory establishment of the geographical limits of the various elementary, junior and senior high schools;
- (3) The calculated use of "optional transfer zones";
- (4) The inequitable and discriminatory administration of an inflexible system of pupil ability grouping curricula;
- (5) the neglect or refusal to employ alleviate plans or programs; and

(6) the failure to devise and establish suitable plans and programs to stem and reverse a declining white pupil population.

2. Denial of Equal Educational Opportunity to Negro Children and Those From the Lower Socio-Economic Groupings

a. These segregated children are taught by less experienced and stable faculties than white children and those from the higher socio-economic groupings.

b. Less money is spent annually on these segregated children than that which is spent on white children and those from the higher socio-economic groupings.

c. As a result, these segregated children have overcrowded and inferior facilities, inadequate or unavailable educational materials and unsatisfactory, thwarted and frustrated educational experiences.

d. These segregated children are prevented from achieving their maximum educational potential by the inequitable and discriminatory administration of the aforesaid system of pupil ability grouping curricula.

e. These segregated children are denied the use of appropriate federal funds available and, in many instances, specifically designed, for the equalization of their educational opportunities.

f. These segregated children are denied the use of other funds available to white children and those in the higher socio-economic groupings.

3. Teacher Segregation

a. Negro teachers are segregated in the Washington, D.C. public school system.

b. In the main, this segregation results from:

(1) the deliberate assignment of Negro teachers to predominantly Negro schools and of white teachers to predominantly white schools.

(2) the deliberate transfer of white teachers to predominantly white schools and the refusal or failure to transfer Negro teachers thereto.

(3) the deliberate staffing of predominantly white schools with permanent teachers and of predominantly Negro schools with temporary teachers.

4. The Denial of Equal Opportunity to Negro Teachers

a. Negro teachers are not appointed to available supervisory positions in predominantly white schools.

b. Negro teachers must therefore compete for available supervisory openings in the predominantly Negro schools.

5. The Denial of Equal Opportunity to Negro Administrative Personnel

a. Negro personnel are not appointed to available administrative positions in any reasonable relationship to their percentage of the population.

b. There are some administrative positions to which Negroes have never been appointed.

II

CONCLUSIONS OF LAW

A. This Court has jurisdiction of the parties and subject matter of the issues of plaintiffs' complaint under the provisions of Title 28, U.S.C. §§1331, 1343, 2201, and 2282; Title 42 U.S.C. §§1981 et seq, §§2000(c) et seq, and 2000(d) et seq; the Elementary and Secondary Education Act of 1945, Article II, §2, Clause 2 of the Constitution of the United States and the Fifth Amendment thereto.

B. This Court is guided by the decisions of the United States Supreme Court in Brown v. Board of Education, 347 U.S. 483, (1954) and Bolling v. Sharpe, 347 U.S. 497, (1954), as well as subsequent decisions expanding upon the principles of those two cases.

C. Denial of equal educational opportunities by action of defendants in this case is prohibited by the Due Process Clause of the Fifth Amendment under the principles of the Brown and Bolling cases.

D. Racial segregation, as created, continued, countenanced and sanctioned by defendants, constitutes a denial of equal educational opportunities.

E. Equal educational opportunities are also denied when any facilities, services or other aspects of the educational process are, to a measurable degree, granted to one segment of the population and denied to another, whether on the basis of race, economic status, national origin or any other classification.

F. Such facilities, services or other aspects of the educational process include, but are not limited to:

1. physical facilities
2. textbooks, including quality, quantity and proper selection
3. library books
4. other instructional materials
5. experienced and qualified teaching and supervisory personnel
6. proper placement in classes and sub-classes
7. adequate access to classes offering varied subject matter
8. opportunity to associate in the learning process with peers of varying racial, ethnic, economic and cultural backgrounds
9. opportunity to prepare for higher educa-

tion and to qualify for entering institutions thereof

10. teachers and supervisory personnel of varying racial ethnic, economic and cultural backgrounds

11. access to a school cafeteria

12. extra-curricular opportunities

13. sufficiently low pupil-teacher ratios

14. adequate and equal per pupil expenditures

G. Children in the District of Columbia between the ages of 7 and 16 are required by law to attend a full-time course of instruction (31 D.C. Code 201).

H. Defendants' creation, development, maintenance and use of the track system have denied equal educational opportunities to plaintiffs as follows:

1. It has been based upon a system of achievement and aptitude tests that are weighted heavily in favor of white children and those from higher socio-economic groupings. The use of such tests has resulted in the unequal placement of white children and those from higher socio-economic groupings into curricula offering greater educational opportunities than those in which are placed Negro children and those from lower socio-economic groupings.

2. The track system is composed of rigid curricula in which children in one track are virtually without any educational or physical contact with children in other tracks. Inter-track movement or accessibility and use of course offerings in different tracks is virtually nonexistent.

3. Placement tests are given on an average of only once every three or four years through a child's educational career. This infrequent testing further accentuates the denial of equal

educational opportunities in a system of rigid curricula marked by the biased placement of public school children therein.

4. The track system, as administered by defendants, results in the deliberate racial and economic segregation of the public school children therein.

5. The track system results in the virtual total inaccessibility of the most advanced (honors track) course offerings to Negro children and those from the lower socio-economic groupings.

6. The track system, as administered by defendants, deliberately and effectively precludes a substantial percentage of plaintiffs' class from ever achieving the educational prerequisites for furthering their educations in institutions of higher learnings, while at the same time allowing almost all white children and those from the higher socio-economic groupings to meet college qualification prerequisites.

7. The track system creates motivational handicaps for children in the lower tracks, resulting in abnormally low achievement, the creation of dropouts, many of whom are subsequently and consequently classified as "juvenile delinquents".

I. Defendants' establishment and manipulation of school boundaries and optional transfer zones have been designed upon the basis of race and economic status and have had the purpose and effect of segregating pupils by race and by economic class.

J. Defendants' policy of pupil placement, including the use of school boundaries, has resulted in white children and those from the higher socio-economic groupings being placed in schools with higher pupil-teacher ratios than Negro children and those from the lower socio-economic groupings, thereby denying the latter equal educational opportunities.

K. The disproportionate expenditures between the elementary schools populated predominantly by white children and those from higher socio-economic groupings and those populated predominantly by Negro children and those from lower socio-economic groupings is a denial to the latter of equal educational opportunities.

L. The present assignment of teacher and supervisory personnel is discriminatory as between those schools populated predominately by white children and those from the higher socio-economic groupings and those populated predominantly by Negro children and those from the lower socio-economic groupings, both on a racial and economic basis and on the basis of teacher qualifications and experience, and is tantamount to a denial of equal educational opportunities.

M. Children in the District of Columbia suburban areas (the City of Alexandria, Va., and the counties of Fairfax (Va.), Arlington (Va.) Montgomery (Md.) and Prince Georges (Md.) are attending schools superior in almost every respect to those of the public schools of the District of Columbia. Defendants' policy of refusal, neglect and failure to request sufficient funds from the District Board of Commissioners and from the Congress of the United States to operate adequately the school system of the District of Columbia has therefore denied, or has materially resulted in denying equal educational opportunities to the children of the District, and, in particular, to the Negro children and those from the lower socio-economic groupings.

N. Since plaintiffs' class amounts to at least 90% of all public school pupils in the District, and less than 5% of public school pupils in the suburban areas, defendants' actions have had and are having the effect of denying to plaintiffs equal educational opportunities on account of their race and/or economic status.

O. Defendants, contrary to the Elementary and Secondary Education Act of 1965 and the Impact Aid Act, have, in violation thereof, allocated funds supplied

thereby to the use and benefit of considerable numbers of children in the higher economic groupings.

P. All of the above actions by the defendants constitute governmental action under the Fifth Amendment to the Constitution of the United States.

Q. The Board of Commissioners of the District of Columbia has the statutory power to levy real estate and personal property taxes to provide greater revenues for the public school system. Moreover, any statutes limiting the Board's taxing powers can be suspended, if necessary, to protect plaintiffs' constitutional rights to enjoy equal educational opportunities.

R. The Board of Commissioners of the District of Columbia has consistently granted more of the revenue requests of the other principal departments of the city than of the Board of Education. Since today "education is perhaps the most important function of state and local governments" (Brown, 347 U.S. at p. 493), this Court has the power to order a reallocation of expenditures of the District of Columbia government in sufficient measure to secure plaintiffs' constitutional rights to desegregation of their educational environment and to equal educational opportunities.

S. This Court has jurisdiction over the United States Office of Education which, in substantial measure, finances both the District of Columbia and the suburban schools, which jurisdiction can be invoked, if necessary, to secure plaintiffs' constitutional rights.

T. Injunctive and other relief necessary to remedy the denial to plaintiffs by defendants of their equal educational opportunities, as secured by the Fifth Amendment to the Constitution of the United States, should be ordered.

Respectfully submitted,

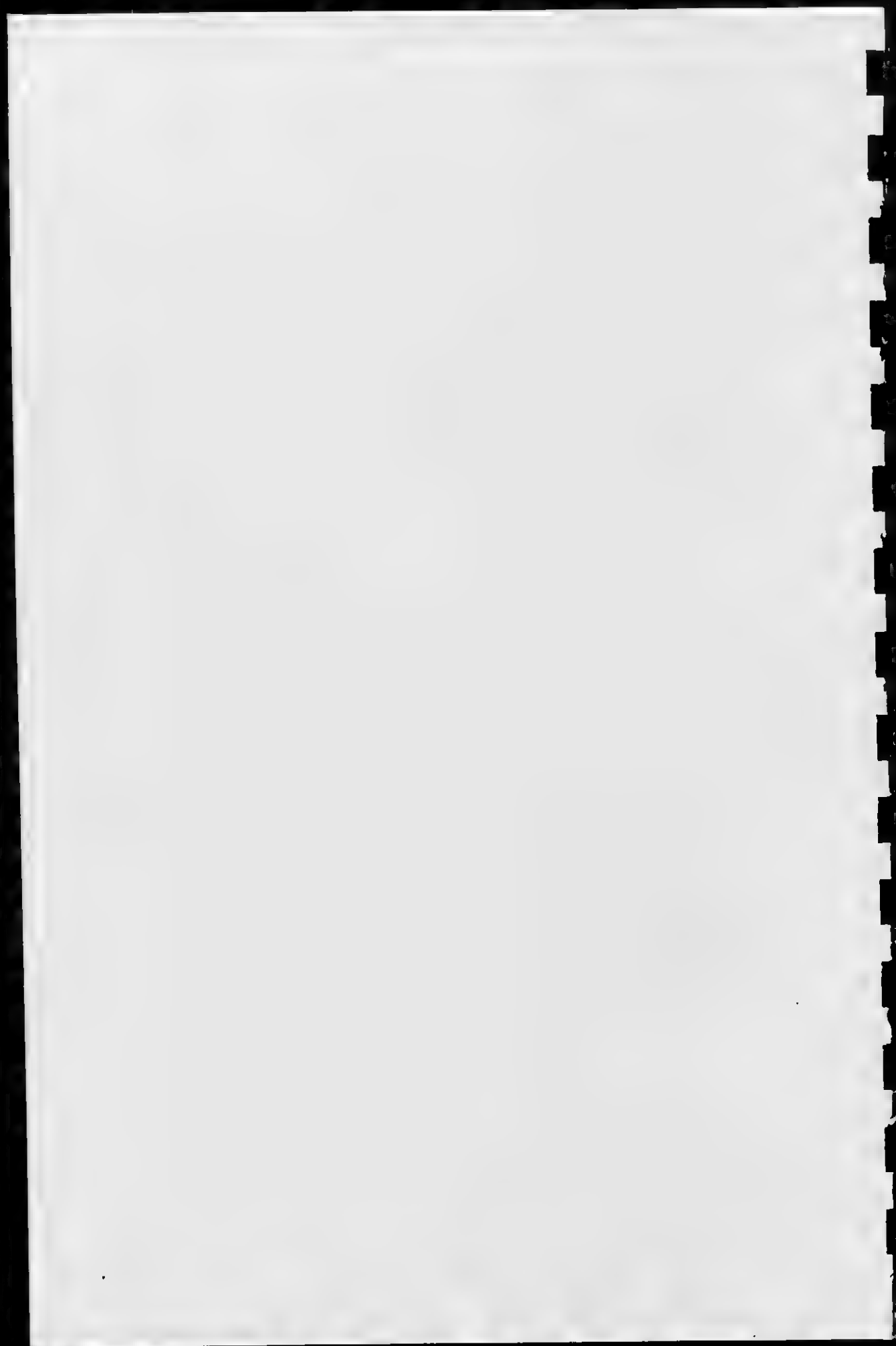
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**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA**

JULIUS W. HOBSON, et al.,

Plaintiffs,

V.

CARL F. HANSEN, et al.,

Defendants.

Civil Action No. 82-66

DEFENDANTS' PROPOSED FINDINGS OF FACT AND CONCLUSIONS
OF LAW

This cause came on for hearing before this Court on July 18, 1966, and the trial thereof having concluded, the Court makes the following findings of fact and conclusions of law:

FINDINGS OF FACT

The plaintiffs, all of whom are Negroes, are comprised of children who it is alleged are students in the District of Columbia public school system and adults who are either a parent or guardian of the infant plaintiffs, as well as one teacher in the District of Columbia public school system. They have filed the instant suit against the District of Columbia Superintendent of Schools, the members of the District of Columbia Board of Education, all of the Judges of the United States District Court for the District of Columbia, and the members of the District of Columbia Board of Elections. Count One of this complaint having been severed by the Chief Judge of the United States Court of Appeals for the District of Columbia Circuit and assigned to a three-judge court because of the alleged constitutional question contained therein, the defendant judges are not parties to that portion of the complaint embodied in Counts Two through Six, to which these findings relate. Since the members of the District

of Columbia Board of Elections are nominal defendants, the term defendants, as used herein, relates only to the Superintendent of Schools and the members of the Board of Education.

Plaintiffs allege numerous discriminatory actions on the part of defendants with respect to Negroes and those who are economically deprived. The findings herein will relate to both classifications and the findings will relate, as groups, to the pertinent allegations contained in the complaint.

The District of Columbia school system is a creature of Congress whose functions are set forth by statute, and all such statutory provisions hereinafter referred to are found in the D.C. Code, unless otherwise indicated. The control of the public schools of the District of Columbia is vested in the Board of Education, hereinafter referred to as the Board, consisting of nine members who are appointed by the judges of the District Court for a term of three years (Section 31-101). The Board determines all questions of general policy relating to the schools, appoints executive officers, defines their duties and directs expenditures. Expenditures of public funds for school purposes are subject to the direction and control of the Commissioners of the District of Columbia and the appropriation of funds from Congress, as will be more fully set forth hereinafter. The Board appoints teachers in the manner prescribed by statute (Section 31-303).

The Superintendent is appointed by the Board for a term of three years. He retains direction of the supervision of all matters pertaining to instruction in all schools under the control of the Board. He has no right to vote on Board matters (Section 31-105).

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PLAINTIFFS' ALLEGATION OF INTENT
TO DISCRIMINATE

Superintendent Hansen, prior to 1954, organized and developed the publication of a booklet entitled "Handbook of Education" the purpose of which was to disseminate among teachers the concepts of intergroup education.

Tr. 590-92 The Handbook was criticized by members of Congress as a part of a propaganda drive toward integration of Negro and white students in the District of Columbia schools. (Tr. 595-96.)

Before the desegregation decision, Dr. Hansen conducted numerous television programs involving joint participation of Negro and white teachers and students used to teach children in the public schools. Tr. 592-93

The Superintendent's activity in these programs and his participation in other intergroup education activities made him the object of numerous threatening telephone calls. (Tr. 593.)

He was actively involved in workshops sponsored for the benefit of teachers to discuss the practices of integration in other schools.

T. 596-99 .

He, as the Assistant Superintendent in charge of Elementary Schools, Division I, and Edith Lyons, as the Assistant Superintendent in charge of Elementary Schools, Division II, jointly convened principals of Negro and white schools in 1954 for the purpose of drawing boundary lines for elementary schools to enable a child to go to the school nearest his home irrespective of race. (Tr. 600.)

From 1956 through 1960, Dr. Hansen made presentations in numerous southern states concerning the success of the desegregation process in the Washington school system. Although criticized by certain members of Congress for these trips, he helped open the first human

relations workshop at Tuskegee Institute. He authored a pamphlet entitled "The Miracle of Social Adjustment" in which he concluded that desegregation produced a stronger educational program. (Tr. 601-605; Dfts. 7.)

In the late 1950's, Dr. Hansen appeared before a Congressional committee to support desegregation of the District's schools. (Tr. 3046-47.)

Dr. Hansen has continually urged the integration of school faculties and has issued a formal declaration to that effect. (Tr. 71-76, 107, 109, 3115; Plfs. L-4.)

Within ten days of the court decision to desegregate the District's public school system, the Board of Education published a declaration of policy that, beginning immediately, children would be assigned to a school not on the basis of race, or any other ethnic, or religious characteristic, but in relation to their residence. (Tr. 600.)

The track system was not introduced with the intent to promote segregation within the District public school system but to meet the needs of mass public education. (Tr. 607-611.)

The plaintiffs are unable to name any Negro child whose placement in any track of the District's pupil ability grouping system was based in whole or in part upon racial considerations; nor are the plaintiffs able to name any white child whose placement in any track was based in whole or in part upon racial considerations. (Dfts. 142.)

ANALYSIS OF THE ENROLLMENT OF THE DISTRICT'S
PUBLIC SCHOOL SYSTEM, THE DISADVANTAGED
PUPIL, AND THE EFFORTS OF THE SCHOOLS
TO MEET HIS NEEDS

The Enrollment of the District of Columbia Schools is
90 per cent Negro

In 1950, population of the District of Columbia was 802, 178. Of that number, 517, 865 (65 per cent) were white and 280, 803 (35 per cent) were Negro. (Plfs. A-25.) Fifteen per cent of the white population was school age, from 5 through 19 years. Twenty per cent of the nonwhite population was school age. (Plfs. A-26.) For the school year 1950-51, the District public schools had 45, 592 white pupils (49 per cent) and 47, 007 Negro pupils (51 per cent). (Dfts. 125.)

In 1953, the last year of segregated public education in the District of Columbia, the estimated District population was 815, 500. Of this amount, 490, 600 (60 per cent) were white and 324, 900 (40 per cent) were nonwhite. (Plfs. V-13.) The District public schools had 44, 897 (43 per cent) white pupils and 58, 936 (57 per cent) Negro pupils. (Dfts. 124.)

Between 1953 and the Census Year 1960, the overall population in the District of Columbia declined. The Negro population increased, but the white population declined at a faster rate. (Plfs. V-13.)

In 1960, the District population was 763, 956. Of this amount, 345, 263 (46 per cent) were white and 411, 737 (54 per cent) were Negro. (Plfs. A-25.) Sixteen per cent of the white population was of school age. Twenty-six per cent of the nonwhite population was of school age. (Plfs. A-26.) The school population of 1960 is not a matter of record. The 1961 school population, however, was 103, 804 Negro pupils and 23, 464 white pupils. (Plfs. P-7.) Bearing in mind that not all children from 5 through 19 are of

Spingarn Senior High School was the only one of the District's 11 senior high schools that had an all Negro enrollment. Five senior high schools had between three and fourteen white pupils. White enrollment was 167 at Coolidge and 344 at Ballou in 1965. No senior high school had an all white enrollment. Wilson was the only senior high school with a predominantly white enrollment. During the prior school year, Western Senior High School, with Wilson, had a predominantly white enrollment. Western had a predominantly Negro enrollment for the first time in its history during the 1965-66 school year. (Plfs. P-4, P-5.)

Among the suburban Washington school systems, Alexandria City and Prince Georges County, had the greatest proportion of Negro pupils during the 1965-66 school year. Alexandria had 13,443 (81 per cent) white pupils and 3,098 (9 per cent) Negro pupils. Prince Georges County had 94,535 (88 per cent) white pupils and 13,390 (12 per cent) Negro pupils. (Plfs. R Series)

The Migration of White Families from the District
to the Suburbs Has Occurred Despite an
Increase in the Educational
Offerings

Since desegregation, the minimum teachers' salary has risen from \$3,440 to \$5,840 and the maximum teachers' salary has risen from \$5,792 to \$11,170 in the District of Columbia. (Plfs. L-7; Dfts. 142.) The starting salary for teachers in the District is highest in the Washington metropolitan area. (The R Series.) The average salary level in the District schools is \$1,000 above the average salary level throughout the United States. (Dfts. 141.)

Since desegregation, the average per pupil expenditure in the District schools has risen from \$340.00 to an estimated \$643.00 for 1965-66 (Dfts. 123) and ranks ninth in the nation in comparison with the

per pupil expenditure in other states. (Dfts. 141.)

Since desegregation, the average class membership in the District schools at the elementary level, where about 65 per cent of the District's pupils are located, has been reduced by approximately seven pupils per class. (Dfts. 125; Plfs. P-4, P-5, P-6, P-7.)

Since desegregation, the operating budget of the District school system has almost quadrupled. (Plfs. O-1.) The capital budget has increased at an even greater rate. (Plfs. O-3.)

Since desegregation, the expenditures for textbooks, library books, and free lunches have risen dramatically. (Dfts. 123.)

Since 1950-51, the number of school librarians has risen from 17 to 105. Since 1950-51, the number of school counselors has risen from 46 to 237. The availability of psychiatric, psychological, and social services has risen markedly since desegregation. (Dfts. 123.)

The Problem of the Disadvantaged Pupil Confronts
the District Schools as it Does Other Large
Urban Public School Systems

In 1960, in the District of Columbia, the median years of schooling of all adults over 25 was 12.4 years for whites and 9.8 years for Negroes. At least one-third of the elementary school pupils live in tracts where the median educational attainment of adults is under 10 years. Almost 8 out of 10 elementary pupils live in areas where the majority of the adults have not completed high school. (Dfts. 124.)

Pupil mobility is high in the District of Columbia. Nearly a quarter of the public school enrollment in 1964 was born outside the District. Since integration, the rate of new entries into the District schools from outside the District averaged more than 7,000 yearly. Between 1962-63 and

school age, and the enrollment figures for 1960 are not available, still, approximately 90 per cent of the District's eligible Negro children and 45 per cent of the District's eligible white children attended the District public schools during the school year 1960-61.

Between 1960 and 1964, the population of the District of Columbia increased to an estimated 811,000. The rise in the Negro population more than offset the continuing decline in the white population. In 1964, the District public schools were composed of 87.6 per cent Negro pupils (123,906) and 12.4 per cent white pupils (17,490). (Plfs. P-5.)

In 1965, the District public schools had an enrollment of 89.5 per cent Negro and 10.5 per cent white. (Plfs. P-4.)

In 1966, the District public schools have a pupil population that is 90.8 per cent Negro and 9.2 per cent white. (Dfts. 142.)

As of October 21, 1965, 29 of the District's 134 elementary schools had an all Negro enrollment in their regular day classes, including special academic classes. Key Elementary School was the only elementary school that had an all white enrollment in its regular classes. There were 15 Negro pupils in severely mentally retarded classes at the Key school. Thirteen elementary schools had predominantly white enrollments. (Plfs. P-4.)

Evans Junior High School was the only one of the District's 25 junior high schools that had an all Negro enrollment. Eleven junior high schools had less than 10 white pupils in the regular classes, including the special academic classes. No junior high school had an all white enrollment. Deal and Gordon were the only junior high schools with a predominantly white enrollment. (Plfs. P-4.)

1964-65, the total number of pupils coming to the District schools from beyond the confines of the District amounted to 42,977. During that time another 9,816 pupils enrolled from non-public schools. (Dfts. 124.)

Poverty characterizes the homes of many pupils. In 1964, 16.9 per cent of the elementary pupils lived in census tracts where the median family income was under \$4,000. Two-thirds of the elementary pupils lived in zones where the median family income was under \$6,000. (Dfts. 124.)

The median family income within the District of Columbia is \$5,993 according to the 1960 U.S. Census. Non-white median family income was \$4,800. White median family income was \$7,692. Ten years earlier, the non-white median family income was \$2,190 and the white median family income was \$3,425. (Plfs. V-9, V-16.)

Median family income is the greatest single correlative factor in comparison with a pupil's performance in school. (Tr. 6256-57, 3240-42.) At any given income level Negro children achieve as well as white children. (Tr. 6260, 6309.)

The median family income for the Washington suburban areas exceeds that of the District of Columbia. According to the 1960 Census, the median family income of Arlington County was \$8,670; Fairfax County, \$8,607; Prince Georges County, \$7,471; Montgomery County, \$9,317. The 1965 median family income for Alexandria City is reported to be \$9,990 while for Montgomery County it is tallied at \$13,816. (The R Series of Exhibits.)

Changing neighborhood patterns and the educational problems that are created thereby are not unique to the District of Columbia. Rather, this is typical of what is taking place in Baltimore, Maryland, and other large American cities. The pattern consists of increasing Negro populations

of lower socio-economic classes, both white and Negro. (Tr. 191, 5021-22.)

A Racially Balanced School Setting is a Valuable
Element of the Informal, Social Aspect
of Education.

It is educationally advantageous to be exposed to various segments of the body politic. Theoretically, therefore, the best educational environment is multi-racial. (Tr. 185.) This advantage derives from an awareness and experience that a student gains from other segments of the pupil population. (Tr. 5093-94.) The educational opportunity afforded a student in a racially integrated school setting that is not afforded him in a segregated school setting is a social educational opportunity, not an academic educational opportunity. An integrated school setting offers a student an informal as well as a formal educational opportunity. (Tr. 5082-83.) If achieved naturally, mingling of the races in school would likely produce a better understanding by a child of the need and ability to live together with other segments of society, but the quality of formal education is largely dependent upon the teacher and is not improved simply by having children of different races sitting behind one another in a class room. (Tr. 3064-68.)

It would be educationally advantageous in the informal sense to bring together white suburban school children and children from Negro mid-city schools, but to be fruitful the exchange must be accomplished on a voluntary basis. (Tr. 6003.) Any educational advantage achieved by a racial balance (whatever that may be) is lost under a plan of enforced integration. (Tr. 199.) Mandatory racial integration in schools would create an educational situation adverse to a pupil's development. (Tr. 5098-99.) The success of any pupil exchange to obtain an integrated school setting depends upon the voluntary cooperation of the white parents. Racial balance created by legislative or judicial fiat within a school

would be educationally sterile and unproductive, for it would inevitably lead to further retreat by the white families. (Tr. 186, 201, 611-13.) No educational advantage, formal or informal, would be derived by such a contrivance. (Tr. 3118-19.)

The District's Public School System is Pursuing a
Program of Compensatory Education to Meet the
Needs of Disadvantaged Pupils.

With a heavy influx of low income Negroes to the large cities and retreat of more advantaged socio-economic classes, the large cities are left with an immense educational problem with which they have not previously had to meet.

Among the methods employed to better the educational opportunities of children from limited backgrounds are busing, pairing schools, adjustment of boundary lines, open enrollments and added services, the latter of which is sometimes called compensatory education. (Tr. 5022.) Compensatory education is the most effective educational device to meet the problem of the disadvantaged child. (Tr. 5026, 6000-1.)

Compensatory education is that added measure of educational effort essential to provide the quality of educational opportunities for an increasing segment of the pupil population in large cities who have been limited in their past history by reason of circumstances of parental or environmental conditions or both. The purpose of compensatory education is to educate children from limited backgrounds to a point where they can compete more successfully with their more fortunate advantaged counterparts in the schools. (Tr. 5022-5023.) Compensatory education includes more than the mere basic elements of education commonly afforded children from average circumstances. It also includes the provision by the schools of functions that typically are furnished to the child by the home

or community environment. (Tr. 5071.)

Among the programs that are envisioned in compensatory education are reading, speech correction, remedial courses in both reading and speech correction, opportunities to experience cultural activities not commonly in the background of disadvantaged children, including visits to museums, participation in drama, music and other creative activities, increase of reading materials both in school and at home, contacts with parents of such children to involve the families in the support of these educational experiences, improved libraries, greater access to libraries and the employment of tutors, advisers and educational specialists. The prime focus of compensatory education is improvement of the communication skills in children in order that these children may become more capable in the use of formal language which actually is used in school but which has been foreign to their background and experience. (Tr. 5023-5024.)

The District public school system is making deliberate efforts to treat the causes of educational disabilities among disadvantaged children by the introduction of innovative compensatory programs into the school program. The District schools are engaged in an attempt to provide educational opportunities to disadvantaged children in addition to the traditional design of public education. It is the school's responsibility to stimulate these pupils and give them the tools that will allow them, on their own initiative, to improve their economic position and live as they wish and where they wish. (Tr. 585-587.)

Defendants' Exhibit 1, "Innovations in Instruction," is a compendium of the innovative methods introduced into the District schools to compensate for disadvantaged backgrounds. Among the programs are

pre-school programs, tutoring programs, guidance services, language arts programs, cultural enrichment programs, twilight schools, work -study programs, physical fitness and breakfast programs and food services.

(Dfts. 1.)

The District Public School System Does Not Consider
Busing or Educational Parks as Valid Administrative
Alternatives to Compensatory Education.

An educational park is a comprehensive arrangement of a school or schools serving pupils from the earliest primary grades through the secondary schools and beyond. In order to operate economically and efficiently an educational park requires a pupil population of 18,000 students on a single campus. That population would include a high school of approximately 5,000 students, junior high schools of approximately 6,500 students and elementary schools of approximately 6,500 students. (Tr. 5036.)

Employing the criteria of the National Council on Schoolhouse Construction, it would take a site of approximately 160 acres in order to accomodate an educational park of 18,000 students. (Tr. 5037-5038.) The District public schools have a pupil population of 145,000 pupils. (Plfs. P-4.)

In the United States there are approximately 25,000 operating school districts. Approximately 151 school districts operate with more than 18,000 pupils and so would be theoretically eligible to use the educational park efficiently and economically. Of those 151 school districts, none now actually employ an educational park. (Tr. 5038.)

While the educational park has the immediate advantage of achieving a certain racial mixture in schools, the practical problems involved in site acquisition, site development, cost of construction and compatable acreage create more educational problems than would be

resolved by the immediate amelioration of de facto segregation in the concept of the educational park. In addition to the initial considerable expenditure of money to acquire, erect and maintain the educational park, the operational cost of such plants is excessive, because they are exposed to a far greater degree of use, heavier abuse and vandalism than would be experienced in separate school facilities. (Tr. 6007-08.)

A realistic evaluation of the educational park concept includes the acquisition of property for an educational park so as to reasonably provide pupils with freedom of movement. In the District of Columbia there is simply not enough space to accommodate large educational complexes. The District of Columbia would require considerable rebuilding in order to erect educational parks. (Tr. 6011-6012.)

As the size of a school plant increases, there is less opportunity for student participation in activities that foster school morale and esprit de corps that motivate pupils to remain in school. This experience is already reflected in high schools that accommodate large numbers of pupils. (Tr. 6010-6011.)

The educational park, requiring as it does, massive numbers of students, necessarily decreases the holding power of schools and, therefore, encourages dropouts. (Tr. 6006-6007.)

The Superintendent of Schools of the District is aware of these limitations upon the use of educational parks in urban settings and considers the educational park a monstrosity. (Tr. 177-178.)

The only busing of non-handicapped children conducted by the public schools of the District is for the purpose of transporting pupils from overcrowded schools requiring part-time classes to under utilized schools

that will give the children a full class day. (Tr. 183.) The Superintendent of Schools is opposed to busing for the sole purpose of racial integration. (Tr. 182.)

In Baltimore, Maryland, from 1963 to the present, a busing program involving 7 schools and approximately 5,600 pupils was conducted. The Baltimore busing program was calculated to achieve (1) the relief of overcrowded schools in the inner city areas, (2) use of underutilized facilities in the fringe and outer areas of the city and (3) the provision of a better opportunity for education for pupils who previously were required to follow a part-time school schedule. (Tr. 5026-5027.)

Under the auspices of the Board of Education, Baltimore undertook a formal evaluation of its busing program conducted by Dr. N. Hubert Joplin. The analysis took place one year after the busing program went into effect. The Baltimore busing experiment contemplated the provision of an enlarged educational experience for pupils remaining in the sending schools the opportunity for racial integration for some 800 children, most of whom were Negro, who would be transported to receiving schools that were predominately white and measurement of the participants (children who remained in the sending schools and received intensified educational experience, children who were transported to achieve a more racially balanced educational setting and children who remained in the receiving schools). The experiment concerned itself not only with pupils but the parents of all three groups, the attitudes of the teachers in both the sending and receiving schools and a consideration of the expected achievement of pupils in the three situations. (Tr. 5029-5030.)

The Baltimore Board of Education evaluation discovered no

significant statistical differences in the expected levels of achievement of those pupils who were transported from the sending school. There was a slight decline in their ability to read or handle arithmetical concepts over and above that which has been expected of them. The measurement of these children was accomplished by the use of standardized achievement tests. (Tr. 5030-5088.)

The study revealed that those children remaining in the sending school who were exposed to compensatory education (lowering of the pupil-teacher ratio and the addition of educational supportive services not formerly given) improved beyond their expected levels of achievement over what had been their prior experience for children in similar conditions or in those same schools previously. (Tr. 5031.)

The pupils who had always attended the receiving schools exhibited no appreciable change in achievement patterns. (Tr. 5088.)

The second year of the Baltimore busing program reflected the same indications in academic achievement of all three groups of children as did the first year. (Tr. 5088-89.)

In the academic sense, the greatest gain in educational achievement will be made among pupils in overcrowded inner city schools where reduced pupil-teacher ratios can be provided and primary supportive educational services can be added. (Tr. 5031.)

The emotional problems experienced by pupils who are compelled to attend a school other than that which they have typically attended will result in an educational disadvantage for such a child. (Tr. 5098.)

Present educational evidence indicates that at least initially, a child compelled to attend a school other than his neighborhood school is

under an educational handicap. Whether or not the loss is permanent depends upon the school situation in which the child is located and what kind of beneficial educational resources are available to combat that loss. (Tr. 5098-99.)

The District's Public School System Cannot
Compensate for all the Environmental
Disadvantages of Its Pupils.

The schools alone cannot compensate for all the disadvantages that are characteristic of children who are environmentally disadvantaged. Language disability, poor verbalization, poor reading skills and poor speech patterns are those features of the culturally handicapped child that the school can combat. The need of such children for greater instruction, as well as individual attention and recognition, are problems that the school can meet in part. (Tr. 5042-43.)

Factors characteristic of the disadvantaged child generally not compensable through school efforts are mobility (the necessity for the lower economic family to frequently change its residence), broken homes, lack of a father figure and uncertain employment of parents. (Tr. 5043-44.)

The American public school has a distinct obligation to every child in its care. The peculiar characteristics of both the disadvantaged child and the gifted child ought to be met by educational bills of fare that challenge each. Sometimes gifted children present more extreme educational problems than do disadvantaged children. The obligation of the public school to meet both problems is equal. (Tr. 5068-69.)

The recognition of the problem of the disadvantaged child is more complete today than at any time in the past. Educators realize that the problem of the disadvantaged child is not merely an educational problem but is also a social, economic and political one and not limited to the school

setting. (Tr. 605-606, 5069-5070.)

In order to achieve a meaningful integration of society, it is necessary to reduce the anxieties that have been experienced among white people in accepting the Negro socially. The creation of a maximum educational effort so as to prepare the Negro and the economically disadvantaged to realistically compete with his white and more economically favored counterpart is the single best tool society has for that purpose. (Tr. 201.)

**FUNDING THE DISTRICT SCHOOLS AND THE
ALLOCATION OF EDUCATIONAL
RESOURCES**

**Congress Controls the Funding of the District Public
School System**

The District of Columbia public school budget is funded from two major sources, District appropriations and federal program funds. Funding from both of these sources is a direct result of Congressional action. The plaintiffs allege that the defendants have failed to request adequate funds from Congress to the detriment of the public school system. (Paragraph 14 of the complaint.)

**The budget for the 1965-66 school year
was One Hundred and Seven Million
Dollars.**

During the fiscal year 1966, the school year 1965-66, the District schools had an operating budget of approximately \$90 million, of which \$75 million came from District appropriations and \$15 million from federal program funds. (Tr. 2671-72.) The two major sources of federal program funds were Title I of the 1965 Elementary and Secondary Education Act (ESEA), \$5.5 million, and Impact Aid, \$4.3 million. (Tr. 2675.)

The District schools' capital budget in fiscal 1966 was approximately \$17.5 million, all of which was appropriated by Congress as regular District funds. (Plfs. O-3.)

Operating costs are costs that recur annually, such as salaries, books, supplies, materials and utilities. (Tr. 2674-75.)

Capital outlay costs include funds for planning, site acquisition and construction of new buildings and additions to existing structures. They also include items of major renovation and modernization of existing facilities. The latter are referred to as "permanent improvements." (Tr. 2673.)

Private donations to the District schools
benefit the Negro pupil community.

Private donations of money and personal property are a third source of revenue to the District school system. Between the school years 1957-58 and 1964-65, inclusive, a total of \$1,326,645.00 was deposited to the credit of the District public school system to fund special projects. The principal named donors included the Eugene and Agnes E. Meyer Foundation and the Ford Foundation. (Dfts. 131.)

Out of the total of \$1,326,645.00, there was \$467,599.00 earmarked to fund projects benefiting "culturally deprived children". Another \$306,356.00 was earmarked to fund a project dealing with "juvenile delinquency". Another \$343,742.00 was earmarked for a "scholarship" program for teachers and a "rehabilitation program" for students attending the Webster School for pregnant girls. (Dfts. 131.)

The District school system has accepted gifts that were received directly by named schools and that did not pass to the general credit of the school system. The donors included parent-teachers associations, school alumni, manufacturing concerns, and civic organizations. Some gifts were in the form of money, other gifts were in the form of goods that were assigned a certain value, and other gifts were in the form of goods that were not assigned a certain value. (Plfs. J-1, J-2, J-3, J-4.)

The total value of these gifts for a given year, or for a period of years is not a matter of record. For the school year 1965-66, the amount of money or goods with an assigned value received by District schools with predominantly white pupil enrollments totaled \$7,055.00, and the amount received by District schools with predominantly Negro pupil enrollments totaled \$25,967.00. (Plfs. J-3, J-4.)

There has been no misuse of federal funds.

Title I, ESEA, is intended to provide funds for the benefit of educationally deprived children in areas of highest concentration of low income. These funds became available throughout the nation and within the District of Columbia for the first time during 1965. (Tr. 2677.)

Impact Aid funds generally are intended to compensate jurisdictions for the presence of federal properties that detract from the tax base. The funds have been available to the States since prior to 1950, but the District was only made eligible for Impact Aid funds in 1964. Within the District, Impact Aid funds are to be concentrated, within the realm of good administration, in the schools that serve the deprived attendance areas of the District. This guideline does not apply to any other jurisdiction receiving Impact Aid funds. (Tr. 2675-76.)

School programs for the school year 1965-66 that were financed by Title I, ESEA, include teachers' aides, Urban Service Corps, Webster Girls' School, STAY School, Language Arts Program, pre-school centers, summer school programs and pupil personnel services, including psychiatric, psychological and counseling services. (Tr. 2678-63; Plfs. I-8.)

School programs for the school year 1965-66 that were funded by Impact Aid include Work Scholarship and I-B Program, counseling services, teachers' aides, summer school programs, kindergarten program, rehabilitation of dropouts, food and kitchen facilities programs. (Plfs. I-6; Defs. 128.)

There are four other titles in ESEA of which the District schools are taking advantage. Title II, School Library Resources, Textbooks and other Instructional Materials, which applies to all schools, public and

private, regardless of income level, was the source of approximately \$345,000.00 during 1965-66. (Tr. 2685; Plfs. 1-8.)

Title III, Supplementary Educational Centers and Services, was the source of approximately \$420,000.00. The guidelines do not restrict the application of these funds to any particular portion of a school system. The principal use of the funds has been for an educational resource center to develop and strengthen the in-service training program and to make available new educational materials. (Tr. 2685-86.)

Title IV, Educational Research and Training, emphasizes regional educational testing laboratories. The District school system is combining with Delaware, Maryland, Virginia and West Virginia to form the Central Atlantic Regional Educational Laboratory. (Tr. 2686-87.)

Title V, Grants to Strengthen State Departments of Education, has been the source of approximately \$130,000.00 to strengthen central administration of educational programs. (Tr. 2686.)

The Washington Integrated Secondary Education (W.I.S.E.) plan is a proposal to develop a demonstration in integrated urban education in the District public schools. The proposal embraces Western Senior High School and its feeder junior high schools, Gordon, Francis, and Jefferson. The total racial composition of these schools as of October 1965, was 2274 Negro pupils and 1292 white pupils. (Plfs. N-11.) Included in these figures are 405 pupils from the east side of Rock Creek Park who attend Western under the open school option. (Plfs. N-9.) The W.I.S.E. plan is an attempt to hold the existing bi-racial composition of the above-named schools by an influx of educational talent and services. (Tr. 462.)

In May 1966, approximately 30 per cent of the Western student body resided in census tracts with a medium income less than \$5,000.00,

another 34 per cent resided in census tracts with a medium income between \$5,000.00 and \$6,999.00. The remaining 36 per cent resided in census tracts with a medium income of \$7,000.00 or above. (Plfs. N-10.)

Gordon Junior High School serves a neighborhood with an income level of \$9,000.00 to \$9,999.00. Francis Junior High School serves a neighborhood with an income level of \$4,000.00 to \$4,999.00. The income level of the neighborhood served by Jefferson Junior High School is not a matter of record. (Plfs. F-3.)

The tentative budget for the W.I.S.E. proposal is \$412,939.00. The only money committed to the proposal is \$30,000.00 from Impact Aid funds for the contractual services of a university to plan a comprehensive proposal by January 1, 1967. The comprehensive proposal will be presented to the Office of Education for funding under Title III. (Tr. 2659; Plfs. N-11.) There is no plan to fund the W.I.S.E. project with money from Title I, ESEA. (Tr. 3964.)

Action on the School Budget by the District Commissioners
and the Congress Has Been More Favorable in
Recent Years

The District school administration begins preparation of a fiscal budget at least fifteen months before the fiscal year begins. For example, preparation of the budget for fiscal 1968, to run from July 1, 1967, to June 30, 1968, was begun as early as February, 1966. All requests from the field are listed. The Superintendent and his staff meet and review the requests item by item. Agreement is reached on what items are to be included in the budget and detailed justifications for the inclusions are prepared and completed by July. In this respect, the federal budget system is used. That is, only the increases above the recurring items of the previous fiscal year are justified. Recurring items once justified are carried forward without

further justification. The budget and justifications are presented to the Board of Education, which has the power to insert or delete budget items. (Tr. 2688-94.)

Thereafter, the budget is transmitted to the Commissioners of the District of Columbia and to the Department of General Administration, D.C., for review pursuant to Section 31-104, D.C. Code, 1961 ed. There is a continuing colloquy between the school administration and the Department of General Administration while the review occurs. Further justifications may be requested and supplied. Then the school administration and the Department of General Administration meet formally to review the recommendations and cuts. During October, generally, the school budget is finalized and goes to the District Commissioners for approval, along with the budgets of other District agencies. The Commissioners meet formally with the school administration, staff and Board members to hear the school system's requests for restoration of funds cut by the Department of General Administration and to take final action on the entire District budget, including the school budget. (Tr. 2688-94; Plfs. K-12.)

Thereafter, the District budget, including the school budget, passes to the Federal Bureau of the Budget wherein the budget is finalized in the President's Budget about January 1st. The President's Budget is presented to Congress, and the school administration amends its justifications to defend the President's Budget. The District budget goes first to the House Appropriations Subcommittee for the District of Columbia and thereafter to the Senate Appropriations Subcommittee. Congress approves the actual school budget for the fiscal year. (Tr. 2688-94.)

Between the fiscal years 1953 and 1966, inclusive, the Board of Education has requested capital outlay funds totaling \$244,316,413.00. Of

these, the District Commissioners have approved \$149,918,160.00, or 61.4 per cent of the Board's requests. The Congress has appropriated \$120,571,072.00, or 49.4 per cent of the Board's requests. (Plfs. O-3; Dfts. 123.) The amounts for capital outlay approved and appropriated have increased markedly in recent years. For fiscal 1964, 1965 and 1966, the Congress has appropriated for capital outlay \$15.6 million, \$14.4 million and \$17.6 million, respectively. This is an annual average of \$15.9 million for the three years, or approximately two and a half times the average annual appropriation during the preceding eleven years. (Dfts. 123.)

The amounts approved by the District Commissioners have likewise risen dramatically during recent years. For fiscal 1964, 1965 and 1966, the Commissioners approved \$17.3 million, \$25.0 million and \$29.5 million, respectively, and an average of 73 per cent of the Board's requests for capital funds during that three-year period as compared with an average of 57 per cent for the preceding three years. (Plfs. O-3.)

Such treatment by the Commissioners compares very favorably with their treatment of the capital budget requests of the District's Public Welfare Department and the Metropolitan Police Department. Over the same three fiscal years, 1964, 1965 and 1966, the Commissioners approved an average of 46 per cent of the capital outlay requests of the Welfare Department and an average of 63 per cent of the capital outlay requests of the Police Department, compared with 73 per cent of the Board's requests. (Plfs. K-12.)

With respect to the Board's operating budget requests over the years, the Board has requested increases in operating expenses over the previous year totaling \$82,360,411.00 between fiscal 1953 and 1966,

inclusive. The District Commissioners have approved \$64,482,734.00, or 78.3 per cent of the Board's requested increases. The Congress has appropriated \$54,709,280.00, or 66.4 per cent of the Board's requested increases. (Plfs. O-2; Dfts. 123.)

The amount of the increases in operating expenses appropriated by Congress for fiscal 1965 and 1966 were \$8.2 million and \$7.4 million, respectively, an average of \$7.8 million or 2.4 times the average increase appropriated over the preceding twelve years. (Dfts. 123.) The mean amount of the increase for operating expenses approved by the Commissioners for the fiscal years 1963 through 1966 was \$8.0 million, as compared with a mean of \$4.4 million for the fiscal years 1958 through 1962, and a mean of \$2.1 million for the fiscal years 1953 through 1957. (Plfs. O-2.)

The treatment afforded by the District Commissioners to the Welfare and Police Departments is commensurate with that afforded the school administration in the matter of operating budget. For the fiscal years 1961 through 1966, inclusive, the Commissioners have approved on the average, 96 per cent of the Board's operating requests, 98 per cent of the Police Department's operating requests, and 93 per cent of the Welfare Department's operating requests. (Plfs. K-12.)

The Operating Expenditure Per Pupil in the District
Public School System has Increased by 80
Per Cent since Desegregation, Ranks
Ninth Among the States, and Ex-
ceeds that of a Majority of the
Washington Suburban
School Systems

The item of per pupil expenditure is a bookkeeping entry, a normative figure widely used in education administration. It involves all the recurring operating costs for a particular school year divided by the number of pupils served during that school year. (Tr. 2694.)

The costs that would go into the per pupil expenditure figure would include costs of administration, supervision, instruction, usual maintenance, supplies, materials, textbooks, utilities and retirement benefits. In other words, the item of per pupil expenditure would include all the operating costs in the District school system except the costs of adult education and the operation of the Teachers' College. (Tr. 2687-98.)

Per pupil expenditure may be calculated on the basis of an average daily membership (ADM) or an average daily attendance (ADA). ADM is the average number of students on the school roll books. ADA is the average number of students actually attending school during a given period of time. (Tr. 2695-96.) ADM is always greater than ADA. Consequently, the per pupil expenditure calculated by ADM is less than the per pupil expenditure calculated by ADA. School systems usually keep both figures. (Tr. 2696.)

The system wide expenditure per pupil in average daily attendance (ADA) increased over 80 per cent in the ten years since desegregation of the District public schools, from \$340.00 in 1955-56 to an estimated \$643.00 in 1965-66. The figure for the 1966-67 school year is estimated to be \$704.00. (Dfts. 123) The District of Columbia ranked ninth among the states in estimated per pupil expenditure (ADA) for the 1965-66 school year. (Dfts. 141.)

The per pupil expenditure of \$643.00 in the District school system for the school year 1965-66 compares favorably with that of the Washington suburban school systems. The District's figure is an expenditure per pupil in average daily attendance (ADA). It is not clear from the plaintiffs' R Series of Exhibits whether the suburban schools reported their figures in terms of expenditure per pupil in average

daily attendance (ADA) or per pupil in average daily membership (ADM). As discussed before, the ADA figure is larger than the ADM figure; it would appear to be larger by about 10 per cent. (Dfts. 136.)

With this in mind, if all the figures for the suburban school systems were ADA figures as is the District's figure of \$643.00, the District's expenditure exceeds that of four of the five suburban school systems. It is exceeded only by Arlington County. If all the suburban figures are ADM figures, then even by adding to the suburban figures at the rate of 10 per cent, the District expenditure per pupil exceeds that of three of the five suburban school systems, Montgomery County, Fairfax County, and Prince Georges County. (Plaintiffs' R Series of Exhibits.)

There is No Discrimination in the Distribution of
Resources Within the District Public
School System

The plaintiffs allege the discriminate distribution of school resources to favor predominantly white and higher income area schools to the disadvantage of predominantly Negro and lower income area schools. (Paragraph 13(c) of the complaint.) Plaintiffs are unable to point to any actual discrimination. (Dfts. 143.)

The per pupil expenditure figure does vary
between school buildings, but it is a
paper figure and not a good measure of
the allocation of resources.

School buildings do have varying per pupil expenditure costs (Plfs. F-1, F-4, P-2), but this does not mean that different school buildings are actually given differing amounts of money to spend on behalf of a pupil and that the predominantly white schools receive more money to spend per pupil than the predominantly Negro schools. The only funds actually credited to a school building for its particular use are allotments

for the purchase of textbooks, supplies and materials. A system wide per pupil figure is derived and each school building is credited a certain amount based upon the simple calculation of the number of students in the school building times the system wide allotment figure. Therefore, the per pupil cost per building for textbooks, materials and supplies will not differ within each level of instruction. (Plfs. F-7, I-1, P-4.)

It is the custom in education administration to keep a per pupil expenditure on a system wide basis rather than by individual buildings. The District school administration conforms to this practice and does not calculate per pupil expenditure for each building as a regular study. (Tr. 2695.) A per pupil expenditure per building figure is not a good measure of the allocation of resources within a school system because the major (89 per cent) cost factor in the operation of schools is personnel salaries, and personnel are not allocated around the District school system on the basis of the salary they receive. (Dfts. 51.)

The salaries of teachers, assistant principals, principals, counselors and librarians account for approximately 75 per cent of the operating expenses of the District schools. The salaries of the central administration, custodial staff and clerical help account for another 14 per cent. In other words, for the school year 1965-66, 89 per cent of the \$75.0 million of the operating budget was paid out for salaries. (Tr. 2698-99.)

Rather than being assigned on the basis of the salary they receive, teachers are assigned on the basis of need for a balanced instructional program, the male image and control in a classroom, and stability of staff. To move teachers around a school system for the purpose of balancing on paper the per pupil expenditure between buildings would be maladministration. (Tr. 2701-2.)

Under the salary scale in effect at the close of 1965-66 school year, two teachers doing exactly the same job could differ in salary by as much as 90 per cent - \$5,350.00 to \$10,050.00. (Tr. 2700.) The difference represents compensation for loyalty and experience much more so than possession of advanced degrees, since at an unreal extreme, where all teachers at the high cost school had a masters degree and none at the low cost school, this would account for only a small portion of the overall differences in average teachers' salaries between the high cost and low cost schools. (Tr. 3794.) Such a pay scale is traditional throughout the profession. (Tr. 2700-01.)

After a few years experience there is no demonstrable difference in the quality of teaching on the basis of salary level. (Tr. 2707, 3796.) In fact, some older teachers may not have the incentive and ability possessed by new teachers. (Tr. 3796-97.)

Pupil achievement, as measured by reading grade level, has no statistical relationship to the per pupil expenditure for a given school building indicating that the per pupil expenditure figure for a building is not a valid indicator of the educational resources within that building. (Tr. 6253; Dfts. 118.)

Personnel salaries account for the major
share of the differential in per pupil
expenditure between school buildings.

The operating expense accounting for the difference in the per pupil cost from school building to school building is personal salaries. (Dfts. 51, page 7.) For the school year 1962-63, the difference between the average per pupil expenditure of 26 high cost and 26 low cost elementary schools was \$139.84. (Dfts. 51, Table L.) Of this amount, \$83.57 or 59.7 per cent of the difference was attributed to teachers' salaries. Another

\$30.23 or 21.6 per cent of the difference was accounted for by salaries paid to principals, assistant principals, custodial staff, clerical staff and substitute teachers. (Dfts. 51, Table I.) Hence, over 80 per cent of the cost differential between the high cost and low cost elementary schools was attributed to salary items that are not distributed on a cost basis.

This salary dominance persisted at the junior and senior high school levels. Teachers' salaries accounted for 57.4 per cent of the cost difference between the six high cost junior high schools and the six low cost junior high schools. (Dfts. 51, Table II.) Another 21.4 per cent of the cost difference was accounted for by other salaries within the school building. (Dfts. 51, Table II.) Of the difference between the three high cost senior high schools and the three low cost senior high schools, 40.5 per cent was accounted for by teachers' salaries and 27.0 per cent of the difference was accounted for by other salaries within the school buildings. (Dfts. 51, Table III.)

The buildings with the high per pupil
cost are older buildings that
require more maintenance.

At each level the cost differential not attributable to personnel salaries was attributable to maintenance costs, utilities (Dfts. 51, page 3), and miscellaneous costs, including allotments for textbooks, workbooks, library books, supplies and materials (Tr. 3784-85) which allotments are the same per pupil at any school. (See page C-11, infra.) The cost of maintenance and utilities depended upon the nature of the building. It cost more to maintain and heat and light older school buildings (Dfts. 51, Table IV; Tr. 3821-22), but the school building must be maintained, heated and lighted, since the seats were needed. (Tr. 2735.) At all three levels, the higher cost schools were the older schools constructed prior to 1950.

(Dfts. 51, Table IV, lines 5 and 6; Tr. 3820-22.) This is particularly evident when the elementary school buildings are examined: it cost six times more to maintain the high cost elementary schools than to maintain the low cost elementary schools (Dfts. 51, Table I), and the average age of the high cost elementary schools was 53 years compared with only 30 years on the average for the low cost elementary schools. (Dfts. 51, Table IV.)

The efficient and inefficient use of
classroom facilities is the major
cause of differing per pupil costs
between school buildings.

While the major difference was personnel salaries, the capacity of the school building and the enrollment therein was the major cause of differing per pupil expenditures from building to building. (Dfts. 51, page 8.) The fact that a school building is under utilized, has an enrollment that is less than capacity, causes the production cost per pupil to increase. (Tr. 6328.) While certain school buildings are under utilized for classroom service, the space is used by the District school system for other than classroom purposes (Tr. 3723), which use would not be reflected in the per pupil expenditure figure. Population movements are the main reasons for the under utilization of classroom space. (Tr. 6328.)

The low cost elementary schools enrolled nearly two and a half times as many students as the high cost elementary schools, 883 students to 338 students. (Dfts. 51, Table II.) To a lesser degree the same was true of junior high and senior high schools, wherein the low cost schools enrolled an average of 538 more students and 398 more students, respectively, than did the high cost junior and senior high schools. (Dfts. 51, Table IV.) The low cost junior high schools enrolled 57 per cent more students than the high cost junior high schools, and the low cost senior high schools enrolled approximately 40 per cent more students than the high cost

senior high schools.

The size of enrollment is particularly significant. Enrollment is the denominator in the calculation of per pupil expenditure and many factors that go to make up the overall cost of operating a school building, such as maintenance and utility costs, salaries of principals, assistant principals and custodians do not vary appreciably as the enrollment changes. (Dfts. 51, page 8.) The size of the enrollment is directly affected by the per cent of occupancy of the building, the crowding or under utilization of the building. The low cost schools at all levels had a higher per cent of occupancy than the high cost schools. (Dfts. 51, Table IV and pages 8 and 9.) Under conditions of crowding, the average class size and the teacher-pupil ratio rose as available classroom facilities are exhausted, and the teacher became financially more efficient. (Dft. 51, Table IV, and pages 8 and 9.) Often the fact of an old building that was costly to maintain, with inefficient heating dovetailed with the fact that the old building was under utilized, thereby magnifying the variation in per pupil cost. (Tr. 3821-22.)

The analysis of differing per pupil costs appearing in defendants' Exhibit 51 was done particularly for the school year 1962-63. It is applicable to differing per pupil costs occurring in subsequent school years. The statistical rank correlation of high and low cost schools for 1963-64 with 1962-63 is 0.8, and for the school year 1964-65 is 0.75. (Tr. 3787-88.)

There is no consistency in racial patterns between the high cost and the low cost schools at different levels.

The high cost schools are not consistently those with predominantly white enrollments and the low cost schools are not consistently those with predominantly Negro enrollments.

In the analysis of the high and low cost schools for the school year 1962-63, it was found that the low cost elementary and junior high schools had a larger percentage of Negro students than did the respective high cost schools. In the senior high schools, however, the reverse was true. The high cost senior high schools contained 99.2 per cent Negro enrollment, whereas the low cost senior high schools contained only 53.7 Negro enrollment. (Dfts. 51, p. 11 and Table V.) The high statistical correlation of rank between the 1962-63 high and low cost schools (the year analyzed) and the high and low cost schools of 1963-64 and 1964-65 justifies the same finding of inconsistent racial patterns between the high and low cost schools at different levels for these later years. (See p. C-15, infra.) More particularly, in a 1963-64 rank of the secondary schools by per pupil costs, the two predominantly white junior high schools, Deal and Gordon, were seventh and twelfth, respectively, out of a total of twenty-five junior high schools. (Plfs. F-1 and P-6.) At the senior high school level, the two predominantly white schools, Wilson and Western, ranked fifth and sixth, respectively, out of a total of eleven senior high schools. (Plfs. F-1, P-6.) In 1964-65, Deal and Gordon ranked twelfth and thirteenth, respectively out of twenty-five junior high schools and Wilson and Western ranked fifth and first out of eleven senior high schools. (Plfs. P-5, P-21.) In 1964-65, Western had seventeen times as many Negro pupils as Wilson and only half as many white pupils as Wilson. (Plfs. P-5.)

The inconsistency of racial pattern among the high and low cost schools has appeared recently within the elementary level. The top ten high cost elementary schools for 1964-65 served approximately seven times as many Negro students (3,612) as white students (547), and the bottom ten low cost elementary schools for the same year served a greater proportion of the

overall elementary school white student population (13.5 per cent) than the overall elementary school Negro student population (8.9 per cent). (Plfs. P-5 and V-19.) More Negroes than whites attended the top ten and the top twenty-six high cost schools during 1962-63 (Plfs. P-7, V-19, V-20), and seven times more Negro students than white students attended the top ten high cost elementary schools during 1964-65. (Plfs. P-5 and V-19.)

There is no consistency in income patterns
between the high cost and the low cost
schools at different levels.

The high cost schools are not consistently serving high income neighborhoods and the low cost schools are not consistently serving low income neighborhoods. For the year 1962-63, an analysis was made of the median incomes of the areas served by schools in the high and low cost groups. At the junior and senior high school level, the high cost schools served the lower income neighborhoods. At the elementary level, there were high and low cost schools at all income levels, evidencing no pattern. (Dfts. 51, Table V.)

For the years 1963-64 and 1964-65, the same inconsistency of income pattern existed at the junior and senior high school level, as is evident in the preceding racial analysis, which is applicable since the schools with predominantly white enrollments, Deal, Gordon, Western and Wilson, serve the high income neighborhoods. (Plfs. F-3.) And more particularly, for the school year 1964-65, three of the top ten high cost elementary schools were serving areas with income levels of less than \$4,000.00, whereas in the low cost group only one of ten schools was serving an area with an income of less than \$4,000.00. (Plfs. V-19.)

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School Construction is Based Upon the Need for Additional
Classrooms and A Policy of Building Schools Where
the Children Reside

Capital construction is based on a need for more classrooms.

(Tr. 2953, 3610.) The need is brought about by an increase in the pupil population (Tr. 3585), or a reduction of the pupil-teacher ratio. (Tr. 3600.) Schools are constructed where the children reside (Tr. 2974), to serve a particular area. (Tr. 2976.)

It has been the consistent experience of the defendants that as a predominantly white neighborhood changes to a predominantly Negro neighborhood a need for additional classrooms arises. (Tr. 3590.) In other words, the number of pupils per dwelling unit is greater for Negro neighborhoods than white neighborhoods. (Tr. 3589.) For example, in an area near Georgia Avenue, N. W., a need for 73 additional classrooms was realized, without any significant new residential construction, because the area had changed from predominantly white to predominantly Negro. (Tr. 3597-3600.)

To help anticipate additional classroom needs, the District of Columbia is divided at each school level into workable areas. (Tr. 3586.) For example, at the elementary level, the District is divided into 22 areas. (Tr. 3586; Dfts. 74.) The areas are chosen to provide homogeneous neighborhoods so the same pupil per dwelling unit figure may be used throughout the area in making the pupil projections. (Tr. 3591.)

Within each area, at each school level, factors of population fluctuations (Tr. 3589), the use of large tracts of vacant land, applications for building permits, zoning changes and public housing activities are watched as indicators of changing classroom needs. (Tr. 3586-87.)

This manner of prediction has been employed by the defendants since 1956 and has proved to be accurate. (Tr. 3588, 3591.)

Under Current Design, School Buildings Are Constructed
To House 1,056 (Elementary), 1,500 (Junior
High) and 2,500 (Senior High) Pupils

A standard school design at each level has been adopted by the defendants. (Tr. 3639.)

A new elementary school building is constructed to include 34 classrooms or so it may be added to until it reaches 34 classrooms. (Tr. 3640.) The 34 classrooms include 30 rooms for regular classes from grades 1 through 6, two kindergarten rooms and two rooms for special academic classes. (Tr. 3640.) A new elementary school building includes an assembly hall that is a combination assembly hall, lunch room and playroom. It includes a hot foods kitchen, a library, a health suite, a special reading instruction room, a special speech instruction room and office space for the principal, assistant principal, counselor, social worker and psychologist. (Tr. 3640.)

A new junior high school building is constructed to include all the rooms in an elementary school building, plus special rooms for science, music, art, shop, mechanical drawing, typing, and a gymnasium. (Tr. 3641.)

A new senior high school building is constructed to the same specification as the junior high schools with additional rooms for the sciences. (Tr. 3643.)

The anticipated capacity of the buildings is 1,056 pupils in an elementary school (Tr. 3643), 1,500 pupils in a junior high school (Tr. 3643), and 2,500 in a senior high school. (Tr. 3643.)

Since Desegregation, School Construction Has Been
Concentrated in Neighborhoods That Are Pre-
dominantly Negro and that Have An In-
come Level of Less Than \$8,000

Between fiscal 1955 and fiscal 1966, 22 new regular elementary

school buildings, including Gibbs and McGogney, and 29 additions to existing elementary school buildings were opened. (Tr. 2615; Dfts. 135.)

During that time, construction was authorized for eight new regular elementary school buildings, not including Gibbs and McGogney, and ten additions. (Dfts. 135.)

During that time, seven new junior high school buildings, including Roper, Rabaut, the Hine replacement, and five additions were completed. (Tr. 2615; Dfts. 135.) Another four new junior high school buildings were authorized but not completed. (Dfts. 135.)

During that time, one new senior high school building and one addition were completed, and another building received major alterations. One new senior high school building and one addition were authorized but not completed during that time. (Dfts. 135.)

There have been no new elementary school buildings constructed, added to or renovated west of Rock Creek Park since fiscal 1953. (Dfts. 74, 135.) The sole piece of construction in that area was a four-room addition to Alice Deal Junior High School in 1962. (Dfts. 135.)

By contrast, the greatest amount of construction activity took place in elementary school Area 8, in far Northeast Washington, which had a pupil population in 1965-66 that was 99.3 per cent Negro. (Dfts. 74.) In Area 8, five new elementary school buildings and three additions were completed. One new elementary school building and one addition were authorized but not completed. (Dfts. 74, 135.)

In Area 8, three new junior high school buildings were completed and one new senior high school building had been authorized. (Dfts. 74, 135.)

Area 8 has seen a tremendous population explosion. (Tr. 2621-22.)

And, by contrast with Area 8, elementary school Area 10, which is just to the south of Area 8 and had a 69.3 per cent white elementary school population in 1965-66, received no construction of any kind at any level during the same period. (Dfts. 74, 135.)

Twenty-five of the twenty-seven new elementary school buildings completed or authorized since 1958 are serving neighborhoods where the median income level is less than \$6,000.00. (Dfts. 132.)

In 1965-66, an average of 47.4 per cent of elementary school pupils within the twelve statistical areas that were predominantly Negro in overall population attended facilities constructed, added to or renovated since 1954. Each of these twelve statistical areas has some post-1954 elementary school construction. (Dfts. 52.)

In 1965-66, an average of 45.7 per cent of elementary school pupils within the fifteen statistical areas that were predominantly Negro in elementary school attendance attended facilities constructed, added to or renovated since 1954. (Dfts. 53.)

Under A Six-Year Capital Construction Program Every
Old and Educationally Inadequate School Building
Will Be Replaced

In August 1966, the defendants adopted (Tr. 3606) a six-year capital construction program extending from fiscal 1968 through fiscal 1973. (Tr. 3603.)

The cost of the program is estimated at \$300 million, including funds for planning, site, construction and equipment. (Tr. 3624-25.)

Under the six-year program, fifty-one new elementary school buildings and additions to existing buildings are planned. Another twenty existing elementary school buildings will be replaced with new buildings.

Another thirty-two elementary school buildings will be modernized.

(Dfts. 75.)

Also, under the six-year program, twelve new junior high school buildings and additions to existing buildings are planned, along with the replacement of one junior high school building. Eight new senior high school buildings and additions to existing buildings are planned. (Dfts. 75.)

Under the program, every old and educationally inadequate school in the system will be replaced. (Tr. 3605.) By the close of the program, every school building will have space for a standard library. (Tr. 3750-51.)

The six-year program anticipates no construction of any new schools west of Rock Creek Park. (Tr. 3716; Dfts. 75.)

Under present and anticipated classroom need, the only site acquisition being considered west of Rock Creek Park is a small parcel in conjunction with a proposed addition to Gordon Junior High School. (Tr. 3644.)

Some buildings west of Rock Creek Park will be modernized, but this can be done on the present sites. There is no need to enlarge these buildings, since they are not now at capacity. (Tr. 3645.)

Ten of the thirteen elementary schools west of Rock Creek Park are educationally inadequate. All ten lack hot lunch facilities (Tr. 3620), a standard library room (Tr. 3620), and a private office for the principal separate from his secretary. (Tr. 3621.) Only two of the schools, Oyster and Eaton, have auditoriums. All ten schools will be modernized under the six-year program. (Tr. 3620-21.)

A Desire to Stabilize the Racial Balance of A Neighborhood,
If Any Racial Balance Exists, Is One Factor in the
Acquisition of New School Sites

Once an area of classroom need has been identified, the defendants consider the following factors in site acquisition for capital

construction:

1. The number of classrooms needed as it dictates whether an addition is made to an existing building or a new building is constructed (Tr. 3606);

2. The geographic center of heaviest pupil load (Tr. 2975, 3606);

3. The cost of site acquisition (Tr. 2975):

(a) whether the property is already owned by the District or the Federal Government (Tr. 3608);

(b) taking private property, if necessary, that is in the poorest physical condition (Tr. 3608);

4. Minimum displacement of families (Tr. 3634);

5. The contour of the land. Some flat space is needed (Tr. 3608); and

6. Stabilization of the racial balance of a neighborhood. (Tr. 3609.)

It has been unwritten administrative policy since 1962 (Tr. 3666, 3662) that if there is a potential for integration, the school system will locate the school in the most favorable spot to promote integration. (Tr. 3661.)

However, lacking any potential for integration within the neighborhood, the defendants have not considered constructing a new building outside a neighborhood and moving the pupils into it from a distance. Rather, a new school would be constructed within the neighborhood. (Tr. 3726.)

Instances of school sites in the six-year capital construction program that represent attempts to stabilize an existing neighborhood include:

1. An addition to the Shepherd Elementary School (Tr. 3610, 3759);

2. A new junior high school at 13th and Van Buren Streets, N.W. (Tr. 3611, 3636-37);

3. A new elementary school at Nichols Avenue and Chesapeake Streets, S.W. (Tr. 3612);

4. Congress Heights Replacement at Nichols and Alabama Avenues, S.E. (Tr. 3612);

5. Lenox Replacement and Brent addition to the east of the United States Capitol (Tr. 3613, 3760); and

6. Peabody Replacement and the Lovejoy-Edmonds Replacement in Area 7. (Tr. 3760.)

The District Public Schools Continue to Be Overcrowded
Despite a Substantial Increase in School Con-
struction but An Official Policy of Transfer
of Pupils to the West Side of Rock Creek
Park Will Not Alleviate the
Overcrowding

Despite the substantial increase in school construction since desegregation, the public schools of the District continue to operate in excess of capacity. Furthermore, despite the concentration of school construction in the Negro areas of the District, the greatest amount of overcrowding exists in schools with predominantly Negro enrollments, particularly at the elementary school level. (Plfs. L-11, p.C-19, infra.)

By virtue of the vigorous building program the District schools have been able to keep pace (Plfs. L-11, P-4, P-5, P-6, P-7) with the massive influx of Negroes into the District of Columbia and the high concentration of school age children in the Negro community, but the school administration has not been able to eliminate the problem of overcrowding. (Plfs. L-11, p.C-14, infra.)

To the extent that relief is possible, the District uses a policy of open schools to relieve overcrowding. (Plfs. N-9, p. E-4, infra.)

The elementary schools operate at 111 per cent of capacity; the junior high schools operate at 114 per cent of capacity; the senior high schools operate at 112 per cent of capacity. (Plfs. L-11.)

There are thirteen elementary schools west of Rock Creek Park. (Plfs. E-1.) Eleven operate at less than full capacity. Two of them, Lafayette and Oyster, are over capacity. (Plfs. L-11.) East of Rock Creek Park, 33 of 125 schools operate at less than full capacity. (Plfs. L-11.)

During 1965-66, the elementary school level accommodated approximately 10,000 pupils beyond its rated building capacity (Plfs. L-11), but transporting this overload to the west side of Rock Creek Park will not meet the problem. There were only 1,231 spaces in the under capacity schools west of Rock Creek Park. (Plfs. L-11.) Furthermore, this space was being used for other than classroom purposes. (Tr. 3723.) Some elementary schools west of Rock Creek Park may be attended as open schools. (Plfs. N-9.)

At the junior high school level, there were three under capacity schools, Evans, Jefferson and Randall, during 1965-66, of twenty-five junior high schools. (Plfs. L-11.) All three schools had predominantly Negro enrollment. (Plfs. P-4.)

At the senior high level during 1965-66, Wilson High School was the only one of eleven schools that was under capacity. It was under capacity by 114 students. (Plfs. L-11.) Wilson was an open school which pupils from overcrowded schools could attend. (Plfs. N-9.) There were approximately 2300 senior high school students beyond building capacity during 1965-66 in the District system.

It is inconsistent with defendants' adherence to neighborhood school policy to consider building new, standard size schools west of Rock Creek Park and using them to relieve the congestion that exists east of the Park. (Tr. 2974, 3724.) Nor have the defendants considered building new schools outside the city limits of the District of Columbia. (Tr. 3749.)

There are numerous practical difficulties to constructing new, standard size school buildings west of Rock Creek Park to serve pupils from the east side of the Park:

1. The park is a wide, natural barrier with very little direct access from one side of the park to the other. Only a few roads traverse the park and at widely separated places (Tr. 2975, 3720);
2. The park is dark during the late school day at certain times of the year. It is heavily wooded. The few roads have heavy traffic and no sidewalks, creating a hazard for foot travel (Tr. 3730);
3. It is a long distance for children to walk across the park (Tr. 3730);
4. The existing school buildings west of Rock Creek Park are in good physical condition and can accommodate all the children in the area. To substitute some newer, larger school buildings solely for the purpose of integrating them would be abandoning good buildings at unnecessary public expense (Tr. 3731); and
5. It would be necessary to bus children across the park, adding to the public expense. (Tr. 3732.)

There is an Equitable Allocation of Library Resources
Within the District Public Schools

Each District senior high school has a library, and each library has between 4,677 (Cardozo) and 9,381 (Eastern) volumes. Each library

has at least one librarian, and as of October 21, 1965, Dunbar, Cardozo and Eastern each had two librarians. (Plfs. H-3, L-9.) The last named schools have predominantly Negro enrollments. (Plfs. P-4.)

Each District junior high school has a library, and each library has between 2,979 (Woodson) and 7,154 (Paul) volumes. As of October 21, 1965, each junior high school except Jefferson and Sousa, had a librarian. (Plfs. H-3, L-9.) The last named schools have predominantly Negro enrollments. (Plfs. P-4.)

Elementary school librarians were first approved in the District budget for the year 1964-65, though library facilities have existed at the elementary school level prior to that time. (Plfs. H-5.) As of June 10, 1966, of the 136 District elementary schools, 45 schools had libraries and assigned librarians, another 45 schools had libraries and were awaiting the assignment of librarians, another 26 schools had library books available within the school and had space possibilities for library conversion, and another 18 schools had library books available within the school but had no space possibilities for libraries. (Plfs. H-1, H-3, H-4.) By the close of fiscal 1973, every school in the District of Columbia will have space available for a standard library. (Tr. 3750-51.)

Of the 45 elementary schools having libraries operated by assigned librarians, two of these schools, Lafayette and Murch, had predominantly white pupil populations, and the remainder had predominantly Negro pupil populations. The pupils attending the 45 elementary schools possessing librarians totaled 42,480. Of this amount, 39,910 pupils were Negro (94 per cent) and 2570 pupils were white (6 per cent). (Plfs. H-1, H-4, P-4.) Throughout the entire elementary school level, 91 per cent of the pupils were Negro and 9 per cent of the pupils were white. (Plfs. P-4.)

THE TEACHING AND ADMINISTRATIVE STAFFS OF THE DISTRICT
PUBLIC SCHOOLS AND THEIR DISTRIBUTION THROUGH-
OUT THE SCHOOL SYSTEM

The Professional Staff of the District Public Schools is
Predominantly Negro, Receives a Salary of \$1,000
More than the National Average for Teachers,
Retains a Stable Staff with an Average of
Ten Years of Teaching Experience,
Contains 97 Per Cent Degree
Holders, and Receives Sub-
stantial Inservice
Training

In October, 1965, the superintendent and deputy superintendent of the District schools were white. Of the ten assistant superintendents, six were white and four were Negro. (Plfs. K-6.)

Of the 110 central supervisory officers, 56 were Negro and 54 were white. Central supervisory officers include the executive assistant to the superintendent, the executive assistant to the deputy superintendent, the assistants to the assistant superintendents, the psychiatrist, the chief examiner, directors, supervising directors, assistant directors, statistical analyst, supervisors, clinical psychologists, psychiatric social workers and the chief attendance officers. (Plfs. K-6.)

In October, 1965, there were 110 elementary school principals; 41 were white and 69 were Negro. There were 25 junior high school principals; 11 were white and 14 were Negro. There were 44 junior high school assistant principals; 11 were white and 33 were Negro. There were 11 senior high school principals; 5 were white and 6 were Negro. There were 23 senior high school assistant principals; nine were Negro and 14 were white. Overall, slightly over 60 per cent of school principals were Negro and slightly over 70 per cent of the assistant principals were Negro. (Plfs. K-6.)

In October 1965, there were 6,100 teachers, counselors and librarians in the District school system. (Plfs. M-1.) Of this number, 4,689 (77 per cent) were Negro and 1,411 (23 per cent) were white. (Plfs. L-3.)

Of the 6,100 teachers, 2,988 were permanent (49.0 per cent), 2,636 were non-tenure (43.2 per cent), and 476 were probationary (7.8 per cent). (Plfs. L-6.)

Of the 2,988 permanent teachers, 2,313 (approximately 77 per cent) are Negro. Of the 2,636 non-tenure teachers, 2,031 (approximately 77 per cent) are Negro. Of the 476 probationary teachers, 345 (approximately 72 per cent) are Negro. (Plfs. L-3.)

Of the 6,100 teachers, 190 (approximately 3 per cent) had no college degree; 4,058 (approximately 66 per cent) had a bachelor's degree; 1,231 (approximately 20 per cent) had a master's degree; 587 (approximately 10 per cent) had a master's degree plus thirty hours of additional credits; and 34 (approximately 1 per cent) had a doctors degree. (Plfs. L-8.)

There were 282 temporary teachers with advanced degrees. (Plfs. L-8.) Of the 190 teachers having no college degree, 158 of these were in the elementary schools. (Plfs. L-8.)

As of October 17, 1963, approximately one-quarter of the District teachers had less than five years teaching experience in the District schools and other school systems. Another quarter had between five and ten years teaching experience. A third quarter had between ten and twenty years of teaching experience, and a fourth quarter had more than twenty years of teaching experience. (Plfs. L-5.)

For the school year 1965-66, the average annual salary paid to classroom teachers in the District of Columbia public schools exceeded the

average salaries paid in all the States of the United States except Alaska, California and New York. The average salary level for the District of Columbia was \$7,500.00 and exceeded by \$1,000.00 the average annual teachers' salary paid throughout the United States. (Dfts. 141.)

On November 13, 1966, Congress enacted the sixth salary increase for the District of Columbia school personnel since desegregation of the public schools. (Plfs. L-7; Dfts. 143.)

Since desegregation, the minimum salary paid to a teacher has risen from \$3,440.00 to \$5,840.00, and the maximum salary that may be paid to a teacher has risen from \$5,792.00 to \$11,170.00. (Plfs. L-7; Dfts. 143.)

Prior to the 1966 salary increase, the minimum teachers' salary was \$5,350.00 and the maximum teachers' salary was \$10,050.00. (Plfs. L-7.) During the 1965-66 school year the District's minimum salary exceeded the minimum salary offered in three of the adjoining suburban jurisdictions and was \$50.00 per year less than the minimum salary offered by Montgomery County and Prince Georges County. For the school year 1966-67, the minimum salary offered by the District school system exceeds the minimum salary of each of the surrounding suburban jurisdictions. (Plfs. Series R.)

Of the school systems surveyed by the defendants, the District of Columbia operates the only large city school system and is the only metropolitan Washington school system that has a teaching staff whose membership is more than half Negro. The exact percentage of Negro teachers in the District is 76.9 per cent. The large city systems nearest to the District in this category are St. Louis with 49.5 per cent and Baltimore with 49.3 per cent. Alexandria has the highest percentage of Negro teachers in the

adjoining suburban school systems, 12.5 per cent. (Dfts. 33.)

Of the school systems surveyed, the District of Columbia operates the only large city school system and the only metropolitan Washington school system that had an administrative staff that is more than half Negro. The exact percentage of Negro administrators in the District is 63.9 per cent. Again the large city systems with the most comparable amount of Negro administrative staff membership are St. Louis and Baltimore with 34.6 per cent and 36.9 per cent, respectively. Alexandria has the highest percentage of Negro administrators in the adjoining suburban school systems, 11.1 per cent. (Dfts. 37.)

Of the school systems surveyed, the District of Columbia had the highest percentage of Negro pupils in its public schools during 1965-66, 89.5 per cent. (Plfs. P-4.) Three other large city systems had more Negroes than whites and another two had only slightly more whites than Negroes. (Dfts. 38.) Of the adjoining suburban school systems, Alexandria had the highest percentage of Negro pupils, approximately 23 per cent. (Dfts. 38.)

The District of Columbia teaching staff has been growing at a higher rate than any of the large cities surveyed and at a higher rate than two of the four adjoining suburban jurisdictions. (Dfts. 35.) Yet the District has maintained a stable staff. The District has had a lower rate of teacher resignation (4.25 per cent) than any of the large city systems except Chicago and Philadelphia, and it has had a lower rate than the adjoining suburban systems, where the average annual rate of resignation over the last four years has been approximately 17 per cent. (Dfts. 37.)

During 1965-66, 3.2 per cent of the teachers in the District of Columbia school system held no degree. This was a lower rate of non-degree teachers than was found in Baltimore, Maryland, Pittsburgh,

Pennsylvania, Cincinnati, Ohio, and Prince Georges County, Maryland, and a higher rate than was found in St. Louis, Missouri, Arlington County, Virginia, Montgomery County, Maryland, and Alexandria, Virginia.

(Dfts. 34.) For the school year 1964-65, the per cent of District teachers with no degree was lower than eight other large city and nearby county school systems. (Dfts. 42.)

A number of the non-degree teaching personnel are found in the area of vocational education where experience equivalents are accepted by the credentials committee in lieu of a bachelor's degree. (Tr. 62-63.)

Appointments to the Professional Staff of the District Public
School System Are Made on the Basis of Merit and
not on the Basis of Race

Applicants for appointments to the District public school system for the first time are subject to a credentials examination by the Board of Examiners. (Tr. 2611.) Satisfactory applicants are certified by the Board of Examiners for probationary or non-tenure appointment. (Tr. 2611.) Initial appointments are made in the tenure (probationary) and non-tenure (temporary) categories, the natural culmination of both of which is a later designation as permanent (full tenure status). All appointments are made in the order of merit. (Plfs. K-10.)

Those applicants certified for probationary appointments must be assigned first to fill existing teaching vacancies. When the supply of probationary appointments is exhausted, non-tenure appointments are assigned to the remaining vacancies. (Tr. 2611.) During the school year 1965-66, there were 527 new teachers, counselors, and librarians appointed to the staff of the District school system. (Dfts. 35.)

After an appointment is made by the Board of Examiners, the Assistant Superintendent in charge of the elementary or secondary level is responsible for the assignment of the new appointee. (Tr. 2609-10.) Assignment is the original placement of a new teacher, counselor or librarian in a given school. (Tr. 2610.) Flexibility in the assignment of probationary appointments is limited because it is mandatory that a probationary appointee be offered assignment to the next vacancy for which he has been certified as qualified that appears on an official list kept by the Board of Education. (Tr. 2611.) When the source of probationary appointees is exhausted, the Assistant Superintendent has the flexibility to assign a non-tenure appointee to any existing teacher vacancy for which he has been certified as qualified. (Tr. 2611.)

Once an appointee has been assigned to a certain school, it is the responsibility of the principal of that school to assign the appointee to a certain class or subject matter within the school. (Tr. 2648.)

The Assistant Superintendent is also responsible for the transfer of teachers, counselors, or librarians from one school to another within the District school system. (Tr. 2609-10.) Transfer requests are made in writing directly to the Assistant superintendent. (Tr. 2959.)

Locally, as in other school systems, teachers wish to work at a school near their homes. (Tr. 2624.) Some schools are not desirable because they are geographically difficult to reach. There are some other schools to which it is difficult to transfer teachers. (Tr. 2624-25.) Permanent teachers who apply for a transfer are given preference in filling an existing vacancy. If more than one permanent teacher applying for the vacancy is satisfactory, the earliest transfer application is honored regardless of race. (Tr. 2896.) As a general rule, teachers strive to

locate their assignment in preferred neighborhoods. Of the two newly constructed junior high schools, it was much easier to staff Rabaut J. H. S. than Roper J. H. S. because Rabaut is located in a higher income level neighborhood than Roper. As a result, there were sixty requests for transfer to Rabaut and twenty requests for transfers to Roper. (Tr. 2624.)

A vacancy for a school officer, a position as a principal, or assistant principal, must be advertised. (Tr. 2625.) A designated appointment means that a vacant position for school officer has been filled as a result of advertising for the particular position, including the name of the school, male or female preference, principalship or assistant principalship. (Tr. 2964.)

A nondesignated appointment to a vacant position for school officer results from advertising a position without designating the school involved. (Tr. 2965.) Currently, appointments are made as a result of non-designated advertising because more positions are becoming available as a result of the influx of federal funds. (Tr. 2965, 2992, 3002.) The use of nondesignated appointments gives the Assistant Superintendent more flexibility in the assignment of school officers than does designated appointments. (Tr. 2965.)

Applicants for a position as a school principal or assistant principal are first rated and ranked by an examining board. The Assistant Superintendent of the level having the vacant position sits as a member of the Board (Tr. 2966), but he may not veto an appointment. (Tr. 2626.) The appointment is submitted to the Superintendent who may or may not submit the appointment to the Board of Education for its approval. (Tr. 2626-27.)

The primary factor in the appointment of a school officer to a vacancy is ability not race. (Tr. 2627, 3040-41, 3070-71.) There are 25

principals and 60 assistant principals in the District school system at the secondary level who have been promoted to these positions since July 1, 1958. Of the 25 principals, 9 are white and 16 are Negro. Of the 60 assistant principals, 15 are white and 45 are Negro. (Tr. 2962.)

When the District opens a new school, it brings into that school an experienced principal from another District school. (Tr. 2994.) Requests by permanent teachers to transfer to the new school are honored but not beyond the 70 per cent limitation of tenure teachers on the staff in any District school. (Tr. 3005; Plfs. L-4.) The new Rabaut school could have been staffed completely with permanent (tenure) teachers requesting transfer to Rabaut. (Tr. 2624.) After the applications by tenure personnel are processed, requests by non-tenure teachers to transfer to the new school are honored. (Tr. 3004.)

If the school is not totally staffed from transfer requests, teachers from older schools that are losing enrollment to the new school are ordered to transfer to the new school. (Tr. 3004, 3006.) If such an enforced transfer is necessary, it is more likely that a non-tenure teacher would be transferred, for as a practical matter, the permanent teacher does have a vested interest in his present position. (Tr. 3007.)

Between the school years 1963-64 and 1965-66, the Department of Instruction conducted 7,454 in-service training sessions. At the same time, Teachers College offered 300 in-service courses. (Plfs. L-18, L-19.)

It is the Policy of the District Public School System to
Establish Bilingual Professional Staffs at Each of
its Schools. But it will not Order Transfers
of Professional Staff Members Without
Their Consent to Accomplish This
Policy

The assignment, transfer, promotion, and appointment of school personnel are not made on the basis of race. Placement of teachers

within the system is made on the determination of merit, capacity to serve, experience, and other qualifications not related to race. This does not mean that the establishment of bi-racial teaching staffs is not an element of consideration. However, before placement is made with a view to the establishment of bi-racial staffs, the teacher is consulted and his concurrence is obtained. (Tr. 69.)

On April 13, 1964, the Superintendent issued a directive asking school personnel to make a maximum effort to establish bi-racial faculties at the remaining schools in the District of Columbia where they did not exist. (Plfs. L-4.) A specific instruction to the assistant superintendent in charge of elementary schools to achieve a bi-racial teaching staff in those instances where it did not obtain was issued. The consideration of bi-racial staffing of teacher faculties is secondary, however, to the consideration of merit and ability. (Tr. 71-72.)

The policy concerning teacher transfer is that if a Negro teacher applied for a transfer to a school where the staff was composed entirely of white teachers, the matters of merit, experience, and likelihood of success, being equal, the application for transfer would be granted. (Tr. 107.)

The Superintendent is opposed, however, to the mandatory transfer of teachers within the school system because of the resentment that would be engendered in teachers from a totalitarian personnel approach to teacher assignment. (Tr. 79.)

It is the policy of the District school administration not to accept a new teacher unless that teacher agrees to attend whatever school which has been designated to her. However, for teachers presently in service, the District administration will not require that teacher to transfer from one

school to another even if, in the view of the administration, such a transfer would be advantageous. (Tr. 76.)

To compel a teacher to accept an assignment under pain of dismissal is administratively foolish and shortsighted because of the likelihood that such a teacher would withdraw and locate in another school system. (Tr. 5077-78.)

Other devices to persuade teachers to accept assignment other than the threat of dismissal are appeal to the teachers' sense of professional obligation and voluntariness, consultation with teacher organizations, and internship arrangements with teachers' colleges and other teacher preparatory institutions. (Tr. 5078-79.)

It is educationally advantageous to maintain stable faculties in schools. Faculty cooperation, continuity of leadership and an articulated sequence of learning, are factors that recommend the stability of teacher faculty. (Tr. 5092.)

While it may be educationally advantageous in theory to expose a Negro pupil to teachers of varied races, the training and preparation of a teacher, whether white or Negro, is more educationally significant than the mere accident of race. (Tr. 5074-75.)

The advantage the Negro pupil derives from exposure to teachers of a racially integrated faculty is paralleled by the advantage to be derived from faculty of ethnic diversity, varied political background, broad travel experience or wide cultural acquaintance. (Tr. 5074.)

An all Negro teacher faculty may be educationally superior for a pupil, whether Negro or white, than may be a racially integrated teacher faculty which is racially integrated (depending upon teacher experience, ability, and preparation). (Tr. 5075-76.)

Theoretically, it is educationally advantageous for white children

to be taught by a racially integrated faculty. However, the same limitation respecting ability, experience and preparation apply. (Tr. 5075-76.)

While there exists today a problem of discovering teachers for assignment to mid-city schools, and even more critical problem for school administrators is the recruitment of a sufficient number of qualified teachers generally. (Tr. 5079.)

The city of Chicago, Illinois, opened in the fall of 1966, with a shortage of more than 500 teachers in its qualified teaching corps. Baltimore, Maryland, opened similarly with a shortage of more than 100 qualified teachers. The vacancies in these two large urban school systems were not limited to inter-city schools. (Tr. 5079-80.)

The necessity of inculcating in teachers an obligation to occupy various assignments within a school system should be generated by persuasion rather than compulsion in order to achieve integrated faculties. (Tr. 5079-80.)

The District continues to progress toward establishing bi-racial staffs at each school. The number of elementary school faculties without a single Negro teacher, counselor or librarian was reduced from 14 during the 1964 school year to 10 during the school year 1965. The number of elementary school faculties without a single white-teacher, counselor or librarian was reduced from 65 during the 1964-65 school year to 62 during the 1965-66 school year. (Plfs. L-4, M-1, M-2.) Of these 62 elementary schools with all-Negro staffs, 7 have white principals, reducing the number of elementary schools without a single white professional staff member to 55.

There were no elementary school communities that were all white. The ten schools without a single Negro teacher, counselor, or librarian each had a bi-racial pupil population. The only elementary school without

any Negro pupils in the regular classes, Key Elementary School, had a bi-racial faculty, two Negro and eight white staff members. (Plfs. M-1, P-4.)

There were 18 elementary school communities that had no white pupils, no white teachers, counselors, librarians, or principals. (Plfs. M-1, P-4.)

The existence of an all-Negro elementary school community is mitigated by the presence of itinerant school personnel many of whom are white and who have frequent contact with the pupils. (Tr. 6020-22.) Among these are itinerant teachers in Art, Foreign Languages, Health, Music and Science at the elementary school level that traveled daily from school to school. They number 143, 80 of whom were Negro and 63 of whom were white. (Plfs. M-1.)

The staffs of all 25 District junior high schools were bi-racial. Seven of the junior high schools had bi-racial administrative staffs. (Plfs. M-1.) The only junior high school having an all-Negro enrollment, Evans Junior High School, had three white teachers. (Plfs. M-1, P-4.) No junior high school had an all-white enrollment. (Plfs. P-4.) Hence, all the junior high school communities are bi-racial.

The staffs of all eleven District senior high schools were bi-racial. Seven of the senior high schools had bi-racial administrative staffs, including Western which was assigned a Negro assistant principal for girls for the first time between the 1964-65 and 1965-66 school years. The administrative staffs of Cardozo, Dunbar, Spingarn and Wilson were not bi-racial. No senior high schools have an all-white enrollment. Spingarn had an all-Negro enrollment and had six white staff members during the 1965-66 school year. Hence, there were no segregated senior high school communities. Plfs. (M-1, M-2, P-4.)

Schools with static or declining enrollments create no teaching vacancies. The schools with predominantly white pupil enrollments have a declining enrollment. The predominantly Negro schools have an increasing enrollment that creates teaching vacancies. (Plfs. P-4, P-5, P-6.) It is easier to integrate teaching staffs at new schools than to integrate existing school staffs since in the formulation of a staff at a new school, a teacher may be assigned or transferred to accomplish integration without forcing someone of a different race out of an existing position. (Tr. 2989.)

It takes at least five years to build a cohesive teacher staff within a school (Tr. 3022) and no teacher has been transferred against his or her will solely for the purpose of integration at the secondary level since 1956. (Tr. 2989.)

No Public School System Has a Policy of Mandatory Transfer
of Teachers to Accomplish Racial Goals

Of the six large city school systems and the four surrounding suburban school systems surveyed by the District of Columbia regarding the reasons and policies for assigning or reassigning (transfer) teachers, each school system indicated that it would assign or transfer a teacher to a particular school if there were a need for that teacher's talent at that school. This is also the practice in the District of Columbia. Each school system, including the District of Columbia, will honor, when possible, a teacher's request for a transfer. (Tr. 3041-42; Dfts. 40.)

Each school system except Montgomery County indicated that it would not require an experienced teacher to teach in a "poverty-area" school against his or her wish, that it would not require a white teacher to transfer to a school with a predominantly Negro enrollment to create a racially balanced faculty, that it would not require a Negro teacher to

transfer for a like reason. These policies conform with those of the District public school system (Dfts. 40) and large city school systems throughout the country. (Tr. 5041-42.)

Montgomery County indicated that it would require an experienced teacher to teach in a "poverty area" school against his or her wishes. It is not clear whether this policy entails the transfer of a teacher experienced within the Montgomery County school system, or the initial assignment of a teacher who has gained experience in another school system. Montgomery County would require a teacher to transfer to a school with a predominance of pupils not of his or her race only when that teacher was a member of a staff that was being disbanded because of a school closing. (Dfts. 40.)

There are devices short of compulsory transfer that might be used to change the compositions of professional staffs at particular schools. A school system might appeal to the teacher's sense of professional obligation and urge voluntary transfers to difficult teaching assignments. (Tr. 5078-79.) Dr. Hansen undertook such an appeal formally in the District system by circular dated April 13, 1964, wherein he invited the teaching profession of the District to volunteer for transfers to schools of different ethnic or socio-economic characteristics. The Superintendent's appeal met with little success. (Tr. 67-68; Plfs. L-4.)

Bonus pay or other financial enducements might be offered to attract teachers to less desirable teaching situations, but the use of this method is dubious. This method would tend to stigmatize certain schools and solidify the recognition of difficult teaching conditions at these schools. (Tr. 5041-42.)

No Negro Teachers or School Officer Has Been Refused a
Transfer to Deal Junior High School or Wilson
Senior High School Because of his Race

Since 1958, 27 permanent teachers have requested transfer to Deal Junior High School. Eight of these transfers have been granted. Two of the 27 teachers requesting transfer were Negro and neither of these applications was granted. (Tr. 2959.)

The first request by a Negro teacher was in 1959. (Tr. 2959.) There was also a request by a white teacher at the same time. (Tr. 2960.) Neither request was granted that year because there were no vacancies at Deal at that time. (Tr. 2959.)

The second request by a permanent Negro teacher was in 1964. At that same time, three transfer requests from permanent white teachers were received. No requests were honored that year because Deal had a percentage over 70 per cent of tenure staff. Administrative policy forbade transfer of permanent personnel to a school already with 70 per cent or more of such teachers. (Tr. 2960.)

Deal Junior High School is administered by one principal and two assistant principals. All three of these positions are occupied by white people. (Plfs. M-1.) One of the assistant principals was appointed in 1958 and has continued in that position. The other two positions at Deal have been occupied by the same persons since before 1958. (Tr. 2970.)

There have been 47 requests from permanent teachers for transfer to Wilson Senior High School since 1958. (Tr. 2960.) Eleven of these requests have been granted. (Tr. 2961.) Only one of the 47 requests was made by a Negro teacher. It was made in 1965 and received along with the request of six white teachers. None of the transfer requests were honored that year because the percentage of permanent teachers at Wilson exceeded the 70 per

cent limitation on tenure teachers within the system as a whole. (Tr. 2931.)

Wilson Senior High School is administered by a principal and two assistant principals, all three of whom are white people. (Plfs. M-1.) A new principal was appointed to Wilson in 1958. (Tr. 2970.) Another principal was appointed to Wilson later than 1958 to replace the retiring principal. The newer principal had been an assistant principal under the retiring principal. (Tr. 2971.) There have been three vacancies at the level of assistant principal at Wilson High School filled since 1958. (Tr. 2971.)

The most recent vacancy at Wilson was that of assistant principal for girls in 1965-66. At the same time there was a similar position vacant at Eastern Senior High School. A Negro woman was assigned to Eastern and a white woman was assigned to Wilson. (Tr. 2972.) Each assignment was made because the woman was familiar with the school to which she was assigned. (Tr. 2973.)

The white woman appointed to Wilson had been a teacher at Wilson for many years. (Tr. 2973.) The Negro woman appointed to Eastern had been a counselor at Spingarn Senior High School. Eastern had served the Spingarn attendance area prior to the construction of Spingarn. The Negro woman was more familiar with that part of the city and more competent to meet the needs of the people therein. (Tr. 2972-73, 2995, 2997-98.)

The white woman assigned to Wilson was more experienced in working with a predominantly academically orientated school community. (Tr. 3000.)

These assignments were the result of the professional judgment of the Assistant Superintendent of Secondary Schools, supported by the Superintendent of Schools and the Board of Education. (Tr. 2995.)

As a General Rule, There is No Difference in
Teaching Ability Between Tenure and Non-
Tenure Personnel and Any Disproportionate
Occurrence of Either Does Not Reflect
Upon the Quality of the Staff at a
Particular School

During the school year 1965-66, 43.2 per cent of the District's teachers, counselors, and librarians were non-tenure personnel, in that they did not meet one or more of the District's paper credential requirements for a probationary (tenure) appointment. (Plfs. L-6.) The per cent of non-tenure staff at the elementary schools serving neighborhoods in the income range of \$3,999 and under to \$6,999, is, on the average, 45.8 per cent. Eighty-two per cent of the elementary school pupils attend these schools. 77.6 per cent of the tenure personnel at the elementary school level were at these schools. (Plfs. L-9, V-4, F-2.)

The following analysis of racial and economic patterns at the elementary school level demonstrates a low concentration of temporary teachers is not confined to schools with predominantly white enrollments or to schools serving high income neighborhoods. Among the predominantly Negro schools serving income levels above \$7,000 that have a low per cent of temporary teachers are Shepherd (20 per cent), Langdon (29 per cent), Noyes (21 per cent), Brightwood (13 per cent), and Brookland (8 per cent). Among the predominantly Negro schools serving income levels under \$7,000 that have a low per cent of temporary teachers are Petworth (28 per cent), Truesdale (3 per cent), Carver (19 per cent), Cooke (28 per cent), Goding (3 per cent), Park View (28 per cent), Smothers (29 per cent), Morse (11 per cent), Mott (22 per cent), and Seaton (14 per cent). The only predominantly white school serving a neighborhood with an income level \$7,000 or less

is the Orr Elementary School. Half of the Orr staff are non-tenure appointments. (Plfs. P-4, L-9, F-2.)

At the junior high school level, a majority of the staffs of the Browne (\$4,000-\$4,999), Hart (\$6,000-\$6,999), Sousa (\$5,000-\$5,999), and Terrell (\$3,000-\$3,999) schools are non-tenure personnel. Each of the staffs of the remaining twenty-one junior high schools contain a majority of tenure personnel (permanent or probationary). The income levels of the neighborhoods served by these twenty-one schools range from \$3,000 - \$3,999 to \$10,000 - \$10,999. Deal Junior High School (\$10,000 - \$10,999), a school with a predominantly white enrollment, had the highest proportion of tenure personnel of all the junior high schools, 73 per cent. But Shaw (\$3,000 - \$3,999) and Banneker (\$4,000 - \$4,999) junior high schools had a higher number of tenure personnel on their staffs than did Deal. Shaw and Banneker have predominantly Negro enrollments. Gordon Junior High School (\$9,000 - \$9,999), the only junior high school, besides Deal, with a predominantly white enrollment, was staffed fifty-six per cent by tenure personnel. The Francis (\$4,000 - \$4,999), Kramer (\$5,000 - \$5,999), Langley (\$5,000 - \$5,999), Macfarland (\$6,000 - \$6,999), Miller (\$4,000 - \$4,999), and Taft (\$8,000 - \$8,999) junior high schools are staffed with a higher proportion of tenure personnel than Gordon and contain predominantly Negro enrollments (Plfs. L-9, P-4) (Figures in parenthesis following named schools are the income levels of the neighborhoods served thereby according to Plaintiffs' Exhibit F-3).

At the senior high school level, fifty per cent or more of the staffs of Anacostia (\$6,000 - \$6,999), Ballou (\$6,000 - \$6,999), Cardoza (\$4,000 - \$4,999), Dunbar (\$3,000 - \$3,999), Eastern (\$4,000 - \$4,999),

Western (\$8,000 - \$8,999) are made up of non-tenure personnel. Wilson Senior High School (\$10,000 - \$10,999), the only senior high school with a predominantly white enrollment during the school year 1965-66, was staffed sixty-eight per cent by tenure personnel, the highest proportion among the senior high schools, but Eastern (\$4,000 - \$4,999), McKinley (\$5,000 - \$5,999), and Spingarn (\$4,000 - \$4,999) senior high schools had a larger number of tenure personnel on their staffs than did Wilson. With the exception of Ballou (\$6,000 - \$6,999), Western Senior High School (\$8,000 - \$8,999) had the least number of tenure personnel on its staff. Before the school year 1965-66, Western had a predominantly white enrollment (Plfs. L-9, P-4, P-5) (Figures in parenthesis following named schools are the income levels of the neighborhoods served thereby according to Plaintiffs' Exhibit F-3).

The distribution of tenure and non-tenure personnel has no relationship to the quality of the teaching staff within a school because there is no general rule that tenure personnel are better instructors than non-tenure personnel. Whether a teacher has tenure status has nothing whatsoever to do with his ability to teach. (Tr. 6122-25, 3042-43, 4042.)

Neither the research nor administrative segment of the educational community are able to articulate the formal prerequisites or incidents of a good teacher. In predicting academic performance within a school, the formal characteristics of the teaching staff may be ignored since the meaningful, formal characteristics are not definable and tend to distribute themselves evenly throughout a school system. (Tr. 6354-55.) Rather it is the informal, intangible and incalculable characteristics of a person that make him or her a good teacher. A good teacher is one who has

an enthusiasm for school work, a love of children, a rapport with the children, an ability to relate to children, an interest in improving the school program and his or her abilities as a teacher, an understanding of the community setting from which a pupil comes. (Tr. 6122-25, 5073, 4041-42.)

This applies particularly to a teacher in special education, including a teacher in charge of a special academic class. A disadvantaged child can be benefited more by a teacher with empathy, a sympathetic attitude and heart toward that child than by any preparation in special education. Motivation and encouragement are the most important contributions that teachers may make to disadvantaged children since they are so easily discouraged. (Tr. 5072-73.)

In-service training for teachers, while helpful to combat the problems of the disadvantaged pupil, is not the solution to the dilemma such a pupil poses. The initial years of teacher experience and the benefits derived from that experience are more advantageous than any in-service program for the purpose of educating not only the disadvantaged child, but any pupil with whom the teacher comes into contact. (Tr. 5073-74.)

SCHOOL BOUNDARIES, OPEN SCHOOLS, AND
THE NEIGHBORHOOD SCHOOL POLICY

Optional Zones Are Maintained to Relieve
Overcrowding and to Give Parents
the Opportunity to Send Their
Children to More Racially
Balanced Schools

Optional zones are public school attendance areas generally located between two or more public schools at any school level, and all pupils that reside within these zones may exercise an option to attend any one of the surrounding schools. (Tr. 153.)

An optional zone was established between the Wilson and Western senior high schools in 1944, when both schools were Division One schools, without regard to race. (Tr. 151, 153, 2956.)

The junior high school children that lived within the Western-Wilson optional zone were required to attend Gordon Junior High School, a feeder school to Western, because that optional zone was within the Gordon attendance area. Following graduation from Gordon, some parents living within the Western-Wilson optional zone would choose to send their children to Wilson which was in the opposite direction from Gordon. Deal Junior High School is the feeder school for Wilson and these two schools are located only a block apart. To accomodate families who had children split in two directions between Gordon and Wilson, the Gordon-Deal optional zone was created in 1963 to be coterminous with the Western-Wilson optional zone. The zone was not created out of racial considerations but to accomodate the families who had children at Gordon and Wilson. (Tr. 162-164, 169.)

In May, 1966, both the Western-Wilson and the Gordon-Deal optional zones were eliminated and the fixed boundary lines between Gordon and

Deal and Western and Wilson continued to be coterminous. Therefore all Gordon pupils went to Western and all Deal pupils went to Wilson. (Tr. 162-164; Plfs. N-4(a).)

The Western-Wilson optional zone was not maintained after desegregation out of any racial considerations. (Tr. 2982.)

During recent school years, about 25 senior high school pupils lived within the Western-Wilson optional zone. A lesser number of junior high school pupils lived within the same area and had the option of attending Gordon or Deal. (Tr. 2848.)

An optional zone was created in the Crestwood area between Roosevelt and Western senior high schools in 1954 to give pupils residing in the Crestwood area an option of attending either school. (Tr. 2957.) The zone was developed as a racial safety-valve in the years immediately following desegregation (Tr. 2957) to prevent serious social tensions. (Tr. 2980-81.) At that time the pupil population of Roosevelt was rapidly changing from predominantly white to predominantly Negro and has been predominantly Negro for some time. (Tr. 2958; Dfts. 20(e).)

This was the only optional zone designed to relieve racial tensions following desegregation. (Tr. 2983.) Currently the optional zones in the Crestwood area (Plfs. N-7(c)) help to distribute the pupil population and eliminate overcrowding as much as possible. (Tr. 2978.) In 1965, Roosevelt was 108 per cent of capacity; Cardozo was 127 per cent of capacity; Western was 101 per cent of capacity; and Wilson was 92 per cent of capacity. (Plfs. L-1

Wilson was added to the Roosevelt-Western optional zone in 1965. (Tr. 2845.) Pupils in the Crestwood area, which is a predominantly Negro area (Tr. 2981) have the option of attending Wilson as well as Western and Roosevelt. (Tr. 2819.)

The Dunbar-Ballou optional zone in Southwest Washington was created in 1960 when Ballou Senior High School was first opened. (Dfts. 135.) At that time both Dunbar and Ballou were below capacity. (Tr. 2852.) Dunbar had a highly predominant Negro enrollment (Tr. 2982) and Ballou had a predominantly white pupil enrollment. (Dfts. 20(g) .) The optional zone was established to give all the pupils residing within the zone, regardless of race, an opportunity to attend an integrated school. (Tr. 2852, 2982.)

The Dunbar-Ballou optional zone was changed to the Dunbar-Western optional zone on May 27, 1966 (Plfs. N-4(a)) because Ballou became so overcrowded: 121.4 per cent of capacity in October, 1965. (Plfs. L-11; Tr. 2661, 2982.) Dunbar continued to be overcrowded at the rate of 120 per cent. (Plfs. L-11.) Western was substituted for Ballou because it was the only school close to Dunbar without substantial overcrowding, 101 per cent. (Plfs. L-11, N-7(c).)

A continuing function of that optional zone is to give parents of both races residing within the zone an opportunity to send their children to an integrated public school. (Tr. 2984.) The population within the Dunbar-Western optional zone is predominantly Negro. (Tr. 2662.) During the school year 1965-66, more Negro pupils than white pupils attended Western from the Dunbar-Western optional zone. Some Negro parents but no white parents chose to send their children to Dunbar, which had only three white children in the entire school and serves a lower income neighborhood than Western. (Plfs. P-4, F-3; Tr. 6713.) Without this option, parents in the Southwest area would send their children to private schools rather than to Dunbar. (Tr. 2984.)

An optional zone was created between Paul and Backus junior high schools at the request of Neighbors Incorporated for the purpose of keeping the white minority at Paul rather than diluting it between the two schools.

(Tr. 2867.) This optional zone was eliminated with the opening of Rabaut Junior High School. (Tr. 2866.) The optional zone was created when Backus was opened (Tr. 2865) in 1963 (Dfts. 135). In October 1963, Paul had 865 Negro pupils and 262 white pupils. Backus had 1,140 Negro pupils and 45 white pupils. (Plfs. P-6.) In 1965, the number of whites in Paul had declined to 136 pupils, and in Backus to 33 pupils. (Plfs. P-4.) In 1966, the number of white pupils were 88 and 15 respectively. (Dfts. 142.)

The Francis-Gordon optional zone, which is no longer in existence, was also created to give parents the option of sending their children to an integrated school. (Tr. 2985.) The option area was absorbed into Gordon because Francis became too overcrowded. (Tr. 2985.)

Under the Open School Policy Designed to Relieve
Overcrowding, Negro Pupils Attend Schools
with Predominantly White Enrollments

An open school is an under capacity school that can accept pupils from anywhere outside its attendance area that were attending overcrowded schools. (Tr. 136, 2652.) Under the open school policy there are frequent transfers of Negro pupils into open schools with predominantly white enrollments. (Tr. 138-139.) For the school year 1965-66, at least 1,433 out-of-boundary children attended schools, many with predominantly white enrollments under the open school policy. (Plfs. N-9, P-4.)

Western is an open school and has been since before 1958. (Tr. 2652.) During the school year 1965-66, 405 pupils from east of Rock Creek Park attended Western High School. Wilson was also an open school

during the 1965-66 school year and 122 pupils from east of Rock Creek Park attended that school. (Plfs. N-7(c), N-9.) Under the open school policy pupils from Western could not attend Wilson and vice versa, because both were open schools.

The Western High School Attendance Area was
Extended to Fourteenth Street, N.W., in
1962, Embracing a Predominantly
Negro Area

In 1962 the eastern boundary of the Western attendance area was moved from 16th Street to 14th Street, N.W., to relieve overcrowding that existed at Cardozo High School. Before that date pupils in the Cardozo attendance area had not exercised the option to attend Western as an open school rather than Cardozo. It became necessary to move the boundary since the open school policy was not succeeding. (Tr. 2653.) The area between 16th Street and 14th Street, N.W., embraced primarily Negro pupils. (Tr. 2653.)

School Boundaries are Drawn to Distribute the
District's School Population Evenly Among
the School Buildings after Consultation
with the Principals of the Schools
in the Areas Concerned

School boundaries are finalized by the assistant superintendents of the elementary and secondary levels after consultation with the school principals concerned and the administrative staff. Boundaries are not redrawn yearly. Boundaries are changed when new schools are opened or there are substantial shifts in population. (Tr. 131.)

Newly opened schools affect the enrollment of surrounding schools. The Rabaut school affected Paul, MacFarland, Backus, and Taft. (Tr. 2616.) The Roper school affected Sousa, Woodson, Miller, Evans, and Kramer. (Tr. 2620.) Roper and Rabaut were both opened in September, 1966. (Tr. 2615.)

Before attendance boundary lines were finalized for the two new schools and the named existing schools, the principal of each existing school was required to build a pin map showing the residence of every child attending his school. (Tr. 2617, 2620.) Defendants' Exhibit 48 is a pin map for the Miller Junior High School. (Tr. 2619.)

The principals of the new schools and the surrounding schools met to discuss and draft boundary lines for their schools (Tr. 2617.) The drafts were submitted to the administration. (Tr. 2620.) Members of the community were contacted for their views on the proposed boundaries. (Tr. 2617, 2620.) The boundaries were finalized in the office of the Assistant Superintendent of Secondary Schools (Tr. 2620.)

Responsibility for the boundary lines for elementary schools is assigned to the office of the Director of Administration which is subordinate to the Assistant Superintendent. The boundaries are drawn after conferences in the office of the Assistant Superintendent. The actual facilities available, the relation of a new school to the adjacent or older school, and location of highway are considered. Conferences include principals and community people as well as the Assistant Superintendent. (Tr. 2045-46.)

After the 1954 decision desegregating the District's public schools all of the principals of the District schools met in groups determined by areas and drew the new boundary lines after studying the numbers of children and the size of each school building. (Tr. 3034-35.)

The Tentative Site of Rabaut Junior High School
was Rejected in Favor of a Site that was
\$1.7 Million Cheaper to Acquire

When the Rabaut Junior High School was being discussed, a tentative site and boundary lines were set for budget justification purposes. (Tr. 2791, 2952.)

The tentative site was at Second and Hamilton Street, N.W. (Tr. 2952.)

The final site was changed to South Dakota and Kansas-Avenues, N.W. because that site was \$1.7 million cheaper to acquire than the tentative site. (Tr. 2952.)

The final site is approximately eight city blocks north of the tentative site. (Tr. 2778, 2952.) It was also discovered that the center of population to be served was not at the tentative site but at the final site, following a block by block study of the neighborhood. (Tr. 2786.)

Preliminary boundary lines for Rabaut were drafted for budget purposes, prior to reception of the principals' recommendations and discussion with interested citizens. (Tr. 2792.) It was not realized that the western boundary line would split the Takoma Elementary School attendance area (Tr. 2954), causing part of the graduating class of Takoma to go to Rabaut and another part to Paul. (Tr. 2795.)

Takoma now feeds Paul Junior High School. In October, 1966, the members of the seventh grade of Paul coming from the June, 1966 graduating class of Takoma numbered 42 Negroes and 12 whites. (Tr. 2954.) The overall population of the Paul seventh grade in October, 1966, was 360 Negroes and 28 whites. (Tr. 2955.) The overall pupil population at Paul is 990 Negroes and 84 whites. (Tr. 2955.) The overall pupil population at Rabaut was 1331 Negroes and 13 whites. (Tr. 2955.)

From the Takoma attendance area, it is easier to go to Paul than to Rabaut by public transportation. (Tr. 2818.)

There is no information in the record how many of the twelve whites attending Paul would have attended Rabaut had the boundary remained as tentatively drawn.

A Change in the Enrollment Within a District Public
School from Predominantly White to Predom-
inantly Negro is Not the Result of Variations
in School Boundary Lines or a Decline
in the Educational Offering

Since desegregation, many of the District's public schools have changed from a predominantly white to a predominantly Negro enrollment. Other District schools have experienced an increased predominance of Negro pupils. (Plfs. P-4, P-5, P-6, P-7; Dfts. 18, 19, 20, 142.) This change in the racial composition of the individual schools is a reflection of the change in the racial composition of the total population of the District. (See page E-1 *infra*.)

Among the schools that have changed from a predominantly white to a predominantly Negro enrollment are the Congress Heights, Draper, Hendley, Shepherd and Takoma elementary schools, the Gordon, Kramer and Sousa junior high schools, and the Anacostia, Ballou, Coolidge, Eastern, McKinley, Roosevelt and Western senior high schools. (Dfts. 18, 19, and 20.) Among the schools that have experienced an increased predominance of Negro pupils are the Beers, Brightwood, Bunker Hill and Peabody elementary schools. (Dfts. 18.)

The Congress Heights, Draper, Hendley, Shepherd and Takoma elementary schools changed from a predominantly white to a predominantly Negro enrollment because of a change within the neighborhoods being served. The attendance areas of these schools were not altered. (Dfts. 18(e), 18(g), 18(h), 18(j), 18(k).) There is no evidence that the quality of education offered at these schools declined. During the period over which the racial change occurred, the pupil-teacher ratio improved at every school but Hendley; Hendley acquired a librarian; the library facilities of all the schools increased

Draper and Hendley acquired a counselor; the per pupil expenditure, which plaintiffs correlate with quality of education, at each school either increased or remained nearly constant; the number of tenure staff members at each school, which plaintiffs correlate with quality of education, also increased. (Dfts. 21, 22, 23.)

The Beers, Brightwood, Bunker Hill and Peabody elementary schools experienced an increased predominance of Negro pupils. During that time, the attendance areas of these schools remained the same or changed very slightly. (Dfts. 18(a), 18(c), 18(d), 18(i).)

Prior to desegregation, Gordon, Kramer and Sousa junior high schools had been members of Division I of the District school system. By the opening of the 1957-58 school year, Sousa had a predominantly Negro enrollment, and the number and percent of white pupils continued to decline beyond that time. Kramer had a predominantly Negro enrollment for the first time during the 1964-65 school year. Gordon has had a declining white enrollment, but the white enrollment is not below a majority. (Dfts. 19(a), 19(b), 19(c).)

During the time that the decline in the white enrollment in Gordon, Kramer and Sousa has been taking place, the pupil-teacher ratio at all three schools has improved and, correspondingly, the per pupil expenditure has increased at all three schools. Each school has acquired a second counselor and a full time librarian, and a greater number of volumes in its library. Each school continues to have a nurse. Special programs have been instituted and continued at each school. (Dfts. 24(a), 24(b), 24(c), 25.)

There is no evidence that the attendance area of Sousa Junior High School was ever altered. The only alteration in the attendance area of

Kramer Junior High School resulted in a division of its pupil membership with Hart Junior High School when the Hart school was opened for the first time in 1956. Up to and through the time of this change the Negro enrollment at Kramer was less than 5 percent. The only change in the attendance area of Gordon Junior High School was the creation in 1963 and the elimination in 1966 of an optional attendance zone between Gordon and Deal involving approximately 25 pupils. (Plfs. E-1; Dfts. 19(a), 19(b), 19(c).)

Prior to desegregation in 1954, Eastern, Roosevelt and McKinley were Division I senior high schools with a completely white enrollment and professional staff. Eastern and McKinley changed to a predominantly Negro enrollment at the beginning of the 1955-56 school year. Roosevelt changed from an all-white enrollment at the end of the 1953-54 school year to a predominantly Negro enrollment at the beginning of the 1956-57 school year. There is no evidence in the record to indicate that the quality of education being offered at these schools declined during these transition periods or that the buildings had deteriorated so as to cause the white pupils to leave these schools. The only evidence of record that indicates any alteration of the attendance areas of these schools is the creation of an optional zone involving Roosevelt. The volume of white pupils leaving Eastern, McKinley and Roosevelt are not reflected by a commensurate increase in the white enrollment at other District senior high schools. (Dfts. 20(a) to 20(f).)

Anacostia, Ballou, Coolidge and Western senior high schools have acquired a predominantly Negro enrollment but more gradually than did Eastern, Roosevelt and McKinley. Anacostia, Coolidge and Western were formerly Division I schools. Ballou was opened for the first time at the beginning of the 1960-61 school year. (Dfts. 20(a) to 20(g).)

Western experienced a predominantly Negro enrollment for the first time in the 1965-66 school year. The per cent of Negroes enrolled in Western was 27 per cent in 1962-63, 34 per cent in 1963-64, 43 per cent in 1964-65 and 53 per cent in 1965-66. At Western High High School between 1962-63 and 1965-66, the pupil-teacher ratio decreased, the amount of per pupil expenditure increased, the number of counselors increased and many special programs were instituted and maintained. (Dfts. 20(f), 24(a), 24(b), 24(c), 25.)

Coolidge acquired a predominantly Negro enrollment for the first time at the beginning of the 1962-63 school year. At Coolidge during the three years prior to that time, the pupil-teacher ratio varied between 23.6 and 25.5, the per pupil expenditure increased, the number of counselors, nurses and librarians remained constant and the number of volumes in the library increased. The size of the staff of teachers, counselors and librarians varied between 58 and 66 people. The number of tenure personnel varied between 60 and 49. The number of non-tenure personnel varied between five and nine. At Coolidge during this time special programs were being instituted and maintained. (Dfts. 20(b), 24(a), 24(b), 24(c), 25.) There have been no substantial boundary changes at Coolidge at least since 1960. (Tr. 2655.)

Ballou High School opened for the first time in 1960 and acquired its students from Anacostia High School. Thereafter, the increase in the Negro enrollment at the two schools is parallel. Both schools experienced predominantly Negro enrollments for the first time in the 1963-64 school year. Ballou and Anacostia serve the middle and southern parts of the District on the east side of the Anacostia River. (Dfts. 20(a), 20(g); Plfs. E-1, N-7(c).)

During the years between its opening and acquiring a predominantly Negro enrollment, the number of tenure teachers at Ballou remained constant. The number of non-tenure teachers doubled to meet the increasing enrollment. The pupil-teacher ratio varied between 25.5 and 26.8. The per pupil expenditure was \$600 when the school first opened and then settled down to \$550 and \$541. The number of counselors, nurses and librarians remained constant. The number of library volumes increased. The teaching and administrative staffs were integrated from the beginning. Special programs were instituted and maintained. At the beginning of the 1963-64 school year the white enrollment declined sharply and fell below fifty per cent. (Dfts. 20(g), 24(a), 24(b), 24(c), 25.)

Between 1960-61 and 1963-64 at Anacostia, the number of counselors, nurses and librarians remained constant. The pupil-teacher ratio rose from 23.5 to 28.3. There was a corresponding decline in the per pupil expenditure. Special programs were introduced and maintained. The physical plant at Anacostia was improved by a building addition in 1958. (Dfts. 135, 20(a), 24(a), 24(b), 24(c), 25.)

The only substantial change in the attendance areas of Anacostia and Ballou occurred when Ballou was opened and relieved Anacostia. (Tr. 2656.)

It has been the experience of the District school system that there is a rapid movement of white pupils out of a particular school after the Negro enrollment reaches 30 to 50 per cent without any change in the operation or excellence of that school, but because large numbers of poor Negro children began to attend that school. (Tr. 186, 189, 2660.) This has also been the experience of the Baltimore public school system. (Tr. 5024-

The Neighborhood School Policy is a Traditional
and Universally Accepted Pattern of Public
School Attendance in the United States

The District of Columbia public school system is operated on the policy of neighborhood schools. (Tr. 3120.) With certain exceptions, pupils who live within a neighborhood must attend that neighborhood school. (Tr. 135.) The size of the attendance area varies between levels. It is smallest at the elementary school level, larger at the junior high school level, and largest at the senior high school level. (Plfs. N-7(a), 7(b), 7(c).)

The approbation by educators of the neighborhood school concept does not thereby remit a child taught in a neighborhood school to the strict confines of that neighborhood. Schools in the District are constantly expanding the horizons of children by excursions out of their local community into areas around the city and into other parts of the country including Williamsburg, Virginia and Canada. There is in the District public school system the development of a deliberate plan for exposing children to the total community experience within the concept of the neighborhood school. (Tr. 203.)

The neighborhood school concept in the United States began in colonial times. It came into formal existence and was organized by Horace Mann, Secretary for the Board of Education, Commonwealth of Massachusetts, in 1840. Since 1840, the concept of the neighborhood school has been a particular part of the structure and organizational arrangement of public schools throughout the United States. The neighborhood school concept is universally used in the public schools of the United States. (Tr. 5031-5033.)

Among the features of the neighborhood school concept that recommend its use are its proximity to the pupils' residence, its identification with the institutions and activities of the neighborhood and the

community, its advantage in fostering family support of school activities, its natural encouragement of local extracurricula programs which tend to build an esprit de corps and sense of identification among the pupils attending the particular school. The neighborhood school encourages the education of a child in that it expands the pupils horizons gradually so that starting with the home, the child moves thereafter into the context of the neighborhood school and those institutions that serve the child in proximity to his home. In the social realm the experiences of the pupil are so articulated that upon what is immediately familiar there is added the experience of activities that are slightly more remote. Thus the child is able to achieve and benefit from a gradual and logical expansion of experiences. (Tr. 5032-5033.)

The neighborhood school achieves an economic advantage in that its proximity in the residence of the pupils attending it obviates the necessity and cost of transportation. This is an important factor when it is recognized that money for the operation of schools is always difficult to obtain. (Tr. 5034.)

Despite the fact that in rural areas bus transportation is often needed to bring children to school, this does not mean that in the rural situation the neighborhood school concept does not exist. On the contrary, the neighborhood is merely enlarged geographically since the number of people making up the neighborhood are more sparsely settled. The fact that pupils in the rural setting come from common backgrounds makes the context of the neighborhood school in that situation applicable on a large geographical base. (Tr. 5034-5035.)

The effective neighborhood school could not operate independently of the cooperation of the people residing within its community. The success

of the neighborhood school depends in large measure on the leadership provided by the principal and the involvement of parents. (Tr. 5036.)

The proximity of the school to the residence of the pupil creates a closeness among the pupil, the parents, and the teacher. The pupil has a confidence in the school and is familiar with it and its surroundings. The pupil feels a unity between school and home. The proximity of the school to the home encourages visits between the parents and the teacher. If there is a breakdown in the home, the pupil has the school to turn to. (Tr. 3118-21, 4047-49, 6089-94.)

For a time the Baltimore City public school system abandoned the neighborhood school concept. It eliminated all school boundaries and permitted an entirely free choice of schools throughout the system. Only a very few students took advantage of this to attend a non-neighborhood school. Of the total school population of 180,000 pupils, only 600 pupils choose to attend schools other than their neighborhood schools. The typical reason given for non-neighborhood attendance was that there was a relative who was better able to take care of the pupil after the school hours than the parents. (Tr. 5097-5100.)

PUPIL ABILITY GROUPING AND
THE "TRACK SYSTEM"

Plaintiffs, in essence, have alleged that the defendants have organized and continued to administer in the public schools under their supervision, a rigid system of pupil ability grouping, referred to as the "track system", which consists of four tracks (basic, general, regular and honors) and that the intent or effect of the "track system" is:

(a) to separate the infant plaintiffs and to deny them of an education equal to that offered to qualified students who are not Negro or are not economically deprived";

(b) deprives the infant plaintiffs of further educational opportunity by discriminatory utilization of the non-college preparatory "general" and "basic" tracks as far as Negro and economically deprived pupils are concerned while at the same time discriminatorily utilizing the college preparatory "regular" and "honor" tracks to allow students who are not Negro or are not economically deprived to qualify for college and to separate such students from Negro and economically deprived students; and,

(c) to discourage and prevent Negro and economically deprived students from completing their secondary education.

Pupil ability grouping is utilized by many urban school systems in the United States in both the elementary and secondary school levels. Los Angeles, San Francisco, San Diego, New Orleans, Baltimore, Detroit, Buffalo, St. Louis, New York City, Cleveland, Cincinnati, Philadelphia, Pittsburgh, Houston, Seattle, San Antonio and Milwaukee are examples of cities reporting grouping practices. (Dfts. 11.)

Grouping practices in other cities vary but include: grouping to reduce the range of reading levels within classes; grouping according to ability of students into classes of slow, average and bright; classes for the academically gifted and the educationally retarded; grouping according to interest, aptitude and ability; grouping based on various curriculums; grouping for the mentally retarded, emotionally disturbed, and pupils with learning disabilities. (Dfts. 11.)

The criteria for ability grouping used vary somewhat but the following factors are considered by one or more of the other school systems. They are: principal-teacher judgments; test scores (individual and group); I Q; achievement in reading and arithmetic skills; age; rate of learning and achievement of child; work habits, attitudes, social and physical maturity and sex of a child; school psychologist interviews, previous scholastic record, motivation of a child, and parents consent. (Dfts. 11.)

Several cities report the use of a "track system" which may include honors, average, slow learners and mentally retarded groups. (Dfts. 11.)

The frequency of re-evaluation of students in any particular group ranges from continual to at least once per year. The majority of the school systems mentioned report satisfaction with grouping and that it is effective. The reasons vary but it is clear that grouping is done in an effort to place the pupil in the best possible situation for his learning. (Dfts. 11.)

The purpose of ability grouping is to provide equal opportunity in education which cannot be achieved by putting all pupils together in the same classes. If the pupil cannot learn or is not challenged to learn, the opportunity to learn is diminished or completely dissipated.

Equal opportunity requires programs equal to the ability of the pupils to respond. (Plfs. B-11, page 22-23.)

Ability grouping has been practiced in the District of Columbia school system since 1906 and existed in both the Division 1 and Division 2 schools prior to 1954. (Tr. 228, 378-379, 3031, 3048-49, 3081-84.)

There is in operation within the school system a pupil ability grouping which is commonly referred to as the "track system". The "track system" adds to the already common practice of ability grouping the advantages of stricter planned specialization of instruction and appropriateness of materials. (Plfs. B-11, page 23.) There are three tracks in the elementary grades 1 through 6, comprising the special academic, general and honors curriculums; three tracks in the junior high school grades 7 through 9, comprising the special academic, regular and honors curriculums, and four tracks in the senior high school grades 10 through 12, comprising special academic, general, regular or college preparatory and honors curriculums. (Tr. 228, 341, 4033-34.)

The special academic curriculum (originally called the basic curriculum or track) is a curriculum of study for children who are educably mentally retarded (Tr. 400-01), possess a reduced ability to learn at a rate which is as fast as a normal rate for learning but who give an indication that they are educable. (Tr. 6192-93.) The general curriculum is designed to meet the needs of the majority of students in school, and by far the great majority of children undertake this curriculum. The college preparatory curriculum is designed to prepare students who have evidenced ability to continue their education beyond high school. The sequence of courses is structured so as to enable a pupil to meet the requirements of most 4-year

colleges. The honors curriculum not only prepares the students for college but is specially designed for the student of accelerated ability. Children in honors classes in the elementary schools are really "honors potentials" because they appear to have high educational achievement possibilities. In elementary school it provides an accelerated and enriched program of learning. (Tr. 226-28, 341-42, 6187-88.)

The requirements for graduation from the senior high schools in the District of Columbia for each curriculum are as follows:

- (a) Honors curriculum - 19 Carnegie units of which 16 1/2 units are required courses;
- (b) Regular or college preparatory curriculum - 16 Carnegie units of which 13 1/2 units are required courses;
- (c) General curriculum - 16 Carnegie units of which 7 1/2 units are required courses;
- (d) Special academic curriculum - 16 Carnegie units of which 10 1/2 units are required courses.

No student can graduate from senior high school with less than 16 Carnegie units. The courses offered are too voluminous to set out in detail in these findings, but are substantially set forth in Plaintiffs' Exhibit "G-1", and to the extent that such courses of study are set forth in the said exhibit, the Court adopts Exhibit "G-1" and makes it a finding of fact. The student is free to take courses of his choice insofar as the elective Carnegie unit requirements are concerned. (Tr. 343-48.)

In the elementary schools curriculum guides which are prepared in the Office of the Assistant Superintendent are used by the elementary school teachers and principals as a guide line of the materials to be taught in each particular grade. Emphasis during the first three years of the child's

education is based upon learning the basic skills, such as reading and writing. The latter three grades continue instruction in these skills, while at the same time accenting academic subjects such as the social sciences, literature, etc. These programs are sequenced so that the children in all elementary schools are taking specific academic courses during the same school year. (Tr. 4031-33; Dfts. 95a-x.)

The "track system" first began in 1956 when it was inaugurated in the 10th grade. In 1957, it was instituted in the 11th grade and in 1958 in the 12th grade. (Tr. 341.) In approximately 1959, the "track system" was instituted in the elementary grades and in the junior high school grades. (Tr. 226.)

A combination of factors brought about the institution of this ability grouping system, such as Superintendent Hansen's experience as teacher and principal, the determination from group tests in 1955 that a large number of children were educationally retarded, and complaints from principals that many students were ill equipped. (Tr. 234-236; Plfs. B-11.) Plans for a multiple curriculum were discussed in 1955 and the various aspects and policies were designed that year. (Tr. 376.) The 4-track curriculum originated in the office of Superintendent Hansen who was at that time Assistant Superintendent of High Schools and received Board approval in the Spring of 1956. (Tr. 377.) The work on the 10th grade track system was somewhat concurrent with the first city-wide tests conducted in 1955 and the test results were a factor in the development of the system. When instituted in 1956, there were white and Negro children in the special academic curriculum as well as in the honors curriculum. (Tr. 380-82.)

The philosophical basis for the institution of the track system was and still is that there must be a place and opportunity for every child

in school. Because of differences in people which are not racial in character there must be variation in curriculum offering. Presently 90 per cent of the youngsters between 14 and 17 are in high school around the country as opposed to the 8 or 9 per cent figure in 1900. (Tr. 607-609; Plfs. B-11, page 19.) The present concept in American Education is that every child should have the opportunity for 12 years of educational growth and the schools cannot be selective as they were years ago when the unresponsive child was ruled out. The old time schools had really a 1 or 2 track program. (Tr. 607.) Every school no matter how affluent will have children for which specially geared programs must be planned, for whom teachers with special training must be developed and to develop techniques of teaching that will strike responses in these children. These philosophies existed in Dr. Hansen's mind before he took over the operation of the senior high schools in 1955. (Tr. 610-11.)

The special academic curriculum, in the elementary school, differs from the general and honors curriculum only in the sense that the same things are given to the child at a slower pace or with adjustments to get increased motivation. The concepts presented are simpler, the vocabulary is easier, and the format is a more wide-open form for children who are having difficulty in learning to do academic work. The text books used in the special academic curriculum have the same appearance as those used in the other curriculums, that is, the same cover, pictures within, table of contents and subject matter. Supplemental material is provided such as Readers Digest Magazines which are designed to appeal to the interest level of the child while containing written material which would conform to his grade level. For example, the book might be a first grade book in terms of the words contained therein, but would be written in a setting which would be of interest to a 4th, 5th or 6th grade student chronologically. (Tr. 6110-11, 6113-14.)

The children receive the same staple supplies and materials as are available to other children. (Tr. 6114-15.)

The special academic classes divided into two groups; children who would normally be in the 1st, 2nd or 3rd grades are in the primary special academic class, while children who would normally be in the 4th, 5th or 6th grades are in the intermediate special academic class. They are ungraded classes. However, the instructional grade on which the child is functioning can be ascertained through standardized tests or from informal tests based on the graded material used. Rarely is a child in a primary special academic class who is kindergarten, 1st or 2nd grade age. Usually the child has had kindergarten, perhaps primary, 1st or 2nd grade experience which puts him at or near 3rd grade age although his achievement has not gone beyond 1st grade level. While a child in the general curriculum ordinarily progresses at the rate of one grade per year, a child in the special academic class may, for example, progress a half grade per year according to graded material but takes up each year where he left off and takes the time necessary for him to learn. (Tr. 6209-14, 6215-17.)

The child may sometimes be placed out of the special academic class in certain subjects and work in regular class rooms and come back to the special academic class for certain other subjects. (Tr. 4040.) During the 5th and 6th grades, the child is prepared for movement to a regular class if he appears to have progressed sufficiently to do so. Thus, at graduation from the 6th grade, the child would have graduated from the regular class and would not require re-evaluation in the 7th grade. If the child has not progressed sufficiently through the six grades of elementary school, he would be graduated in a special academic class and be programmed in his class in the 7th grade pending evaluation. Efforts are made to keep

these children somewhat near their age group. (Tr. 6209-14, 6215-17.)

A child is considered for placement in the special academic curriculum only if the child is not performing successfully in the general program. Such factors as inability to keep up, getting failing grades, emotional behavior problems because of his inability to function in regular programs are conditions precedent to special placement in any of the special programs. (Tr. 323.) It first becomes evident to the classroom teacher that the child is not performing to the norm of the bulk of the class. The school must take a look at the child and try to find out what makes the child react to the school situations. In many cases it is determined that the child has problems elsewhere such as in the playground and in the neighborhood. The counselor or principal reviews the child's school records and the information process begins in an effort to understand the causes of the child's inability to function in a normal classroom situation. The child has been observed in the class by the teacher, principal and counselor. The Department of Pupil Appraisal and Pupil Personnel is requested to test the child. The psychologist, after evaluation, makes a recommendation. In many cases the recommendation is that the child does not need any special placement and that adjustments may be made within the general curriculum. In other cases the psychologist recommends placement in the special academic class. At this point the school knows that the child should be moved for special help. This special help is brought about by the smaller pupil-teacher ratio which gives the teacher more time to attend to the individual needs of the child into the utilization of a special curriculum geared to the child's needs. (Tr. 4035, 6103-18, 6209-17.) Group tests are also a factor in providing information leading to a recommendation for placement in special academic curriculums. The form 205 which is submitted

by the principal to the Pupil Personnel Department psychologist provides information about the child such as his teacher's experience with him, family background, attitude of parents, health record and previous attendance record in other schools. (Tr. 6204-05.)

While the IQ of the child is ascertained, and is an indicator to assist in the evaluation by the school psychologist, there is no "IQ cut-off" figure which automatically results in the placement of a child in a curriculum. The I.Q. s of the children in special academic vary generally from 55 to 80, but the range is not arbitrarily applied for placement purposes. The range can be higher or lower since the recommendation for placement is based upon many other factors. (Tr. 6199, 6204-05.) No child is now programmed in the special academic curriculum without the parents' consent (Tr. 308, 321), or before recommendation has been made by the school psychologist. (Tr. 408, 6040-41.)

Children who are severely mentally retarded are not educable, but may be trainable. They are not programmed in the special academic curriculum. These children are provided with special classes at certain schools in the school system. Pending availability of classroom space and transportation facilities they are retained at the neighborhood school. They may, during this period, be placed temporarily in a special academic class or a general class until the transfer can be made. They are not, however, assigned or programmed in these curriculums. (Tr. 6047-48, 6193-94.)

Children programmed in the special academic curriculum are in the mainstream of school life everywhere outside their classroom and are treated no differently than any other student. (Tr. 4040, 6118-19.)

Flexibility in curriculum placement is inherent in the track system and has been so since its inception. Flexibility is provided by

re-evaluation of a child's performance during the course of the school year. (Tr. 2612, 2646, 4040.) The principal may recommend movement of the child from the special academic curriculum at any time that the child is able to make the change. (Tr. 3037-38, 4040.)

The "track system" offers multiple curriculums (PIfs. G-1) and variations in curriculum to meet the various levels of ability of the students and differences in interests. Students in the honors, college preparatory, general and special academic curriculums may elect subjects not included in basic curriculums. Students in these curriculums may also select major interests such as humanities, science, mathematics, art and music, shop or home economics, etc. Students are free to elect subjects not included in their curriculum choice. (PIfs. B-11, ch. 4.)

Flexibility is also provided by "cross-tracking" whereby a pupil may take a course in a curriculum sequence different from the sequence in which he is placed. (Tr. 2647.) Cross-tracking is done by the principal to a limited extent in the elementary schools (Tr. 4040, 6216), and is encouraged at the junior and senior high school level upon election of the student. (Tr. 2647.) The parent is made aware of the curriculum that the child will follow at the junior and senior high school level since a program card is sent home to the parent and the parent signs it for its return to the school. (Tr. 2645.) At the junior and senior high school levels (Tr. 2906) parents' requests that the child be allowed to cross-track are honored. At the elementary level, a child will not be programmed in special academic or honors curriculums without parental consent. (Tr. 321-22.)

From June, 1963 to June 30, 1964, school records show that over 1,300 students moved from one curriculum to another in the senior high schools. (PIfs. B-1.) For a comparable period, 503 students moved from one

curriculum to another in the junior high schools. (Plfs. B-1.)

So far as cross-tracking is concerned, for the school year 1964-65 the evidence shows that in the senior high schools 185 (11 per cent) of the students in the special academic curriculum elected courses outside the curriculum; 2989 (33 per cent) of the students in the general curriculum elected courses outside the curriculum; 909 (14 per cent) of the students in the regular or college preparatory curriculum elected courses outside the curriculum; and 199 (19 per cent) of the students in the honors curriculum elected courses outside the curriculum. A total of 4,282 students made such an election. They elected a total of 5,880 courses outside the programmed curriculum. (Dfts. 139, 140; Plfs. B-16.)

Children who are five years old may be registered for kindergarten. They are not required by law, however, to attend. The purpose of kindergarten is to ready the child for first grade by enriching his experiences, to provide basic understandings and concepts, and to develop independence. (Tr. 6097-99.)

While not a part of the so-called "track system" the school also operates a "junior-primary" class which is designed as an intermediate step between kindergarten and the first or second grade. If after kindergarten (or if the child has not attended kindergarten) the child cannot sufficiently handle the concepts required for the more formal learning in the first grade, he is placed in the junior primary class. It is a flexible grade and the child does not always stay a full year. If the junior primary teacher can see development and improvement, he is placed with the group he would have otherwise been with in the first grade. Some children after a full year in the junior primary class are so advanced that they can be moved to

second grade, thus placing them with the original group they started with. Several factors help the school make a determination whether a child needs the additional support of the junior primary grade. At the conclusion of the kindergarten year, each child is given a readiness test which is non-verbal in nature. The test is rated from superior to poor risk. The teachers judgment, however, is an important factor in making this determination. Many children who score below normal are, nevertheless, sent to the first grade upon recommendation of the teacher. Conversely, there are children who may make a normal score, but because of certain basic un-readinesses known to the teacher, but not measured by the test, recommendation is made for placement in the junior primary class. (Tr. 4030-31, 6099-6102, 4069-70.)

The Special Academic and Honors Curriculums Together
Contain Less Than Fifteen Per Cent of the Junior High
School or Senior High School Pupils and Together
Contain Less Than Five Per Cent of the
Elementary School
Pupils

As of October, 1965, approximately 2.7 per cent of the elementary school pupils were in the special academic curriculum and another 1.5 per cent were in the honors curriculum. The remaining 95.8 per cent of the elementary school pupils were in the general curriculum.
 (Plfs. B-4.)

Of the 2.7 per cent of elementary school pupils located in the special academic curriculum, 95.7 per cent of them were Negro and 4.3 per cent of them were white. Throughout the entire elementary school level 91 per cent of the pupils were Negro and 9 per cent of them were white.
 (Plfs. B-4, P-4.)

No breakdown of pupils by race in the honors curriculum at the elementary level is available for the school year 1965-66.

As of October, 1964, approximately 3.9 per cent of the elementary school pupils were in the special academic curriculum, and another 1.5 per cent were in the honors curriculum. The remaining 94.6 per cent of the elementary school pupils were in the general curriculum. (Plfs. C-15)

Of the 3.9 per cent of elementary school pupils located in the special academic curriculum, 95.3 per cent of them were Negro and 4.7 per cent of them were white. Throughout the entire elementary school level 89.5 per cent of the students were Negro and 10.5 per cent were white.
 (Plfs. P-5.)

No breakdown of pupils by race in the honors curriculum at the elementary level is available for the school year 1964-65.

As of October, 1965, approximately 9.5 per cent of the junior

high school pupils were in the special academic curriculum, and another 5.4 per cent were in the honors curriculum. The remaining 85.1 per cent of the junior high school pupils were in the general curriculum. (Plfs. B-5.)

Of the 9.5 per cent of junior high school pupils located in the special academic curriculum, 96.4 per cent of them were Negro and 3.6 per cent of them were white. Throughout the entire junior high school level 89.5 per cent of the pupils were Negro and 10.5 per cent of them were white. (Plfs. B.-5, P-4.)

No breakdown of pupils by race in the honors curriculum at the junior high school level is available for the school year 1965-66.

As of October, 1964, approximately 14.4 per cent of the junior high school pupils were in the special academic curriculum, and another 6.1 per cent were in the honors curriculum. The remaining 79.5 per cent of the junior high school pupils were in the general curriculum. (Plfs. C-15.)

Of the 14.4 per cent of junior high school pupils located in the special academic curriculum, 94.7 per cent of them were Negro and 5.3 per cent of them were white. Throughout the entire junior high school level 87.6 per cent of the pupils were Negro and 12.4 per cent of them were white. (Plfs. P-5.)

No breakdown of pupils by race in the honors curriculum at the junior high school level is available for the school year 1964-65.

As of October, 1964, approximately 9 per cent of the senior high school pupils were in the special academic curriculum, another 5.8 per cent were in the honors curriculum. Of the remaining pupils, 35.6 per cent were in the regular college preparatory curriculum, and 49.6 per cent were in the general curriculum. (Plfs. B-16.)

No breakdown of pupils by race in any of the four senior high school curriculums is available for the school years 1964-65. (Plfs. C-15.)

The Per Cent of a School's Student Body in Any Curriculum
Corresponds to the Income Level of the Neighborhood
Served by That School and it Does Not Correspond
to the Racial Predominance Within That School

The per cent of the student body of a given school in a given curriculum corresponds to the income level of the neighborhood served by that school. That is, generally, the higher the income level of the area served by the school, the higher the per cent of the student body of that school in the advanced curriculums.

In the Senior High Schools

Of the eleven senior high schools, Wilson Senior High School serves the neighborhood with the highest income level, \$10,000 to \$10,999. Western Senior High School serves a neighborhood with an income level of \$8,000 to \$8,999. Coolidge Senior High School serves a neighborhood with an income level of \$7,000 to \$7,999. Anacostia, Ballou, and Roosevelt senior high schools serve neighborhoods with income levels of \$6,000 to \$6,999. McKinley Senior High School serves a neighborhood with an income level of \$5,000 to \$5,999. Cardozo, Eastern and Spingarn senior high schools serve neighborhoods with income levels of \$4,000 to \$4,999. Dunbar Senior High School serves the lowest income level neighborhood at the senior high school level, \$3,000 to \$3,999. (Plfs. F-3.)

The school serving the highest income level neighborhood, Wilson Senior High School, has offered no special academic curriculum as far back as 1961-62. Every other senior high school has offered the special academic curriculum as far back as 1961-62. (Plfs. B-3.) However, the school serving the lowest income level neighborhood, Dunbar Senior High School, has offered no honors curriculum as far back as 1961-62. A college preparatory curriculum is offered at Dunbar. Every other senior high school offered an honors program in 1956-66. (Plfs. B 3.)

In October, 1965, Dunbar had three white pupils and 1,508 Negro pupils. Spingarn, which had no white pupils at all, Roosevelt, McKinley, Eastern, and Cardozo, each of which had less than 14 white pupils, all offered an honors curriculum. (Plfs. P-4, B-3.)

There is a correspondence between the income level of the neighborhood served by a senior high school and the per cent of the student body in a given curriculum. Wilson, Western, and Coolidge senior high schools serve the higher income neighborhoods of \$7,000 to \$10,999; Roosevelt, Ballou, Anacostia, and McKinley senior high schools serve the medium income neighborhoods of \$5,000 to \$6,999; and Spingarn, Eastern, Cardozo, and Dunbar senior high schools serve the lower income neighborhoods of \$3,000 to \$4,999. (Plfs. F-3.)

The correspondence between the per cent of the student body in the honors curriculum and the income level of the neighborhood served is exact. In the higher income grouping of Wilson, Western, and Coolidge, the per cent of the student body at each school in the honors curriculum was 17.1 per cent, 12.7 per cent and 10.8 per cent respectively. In the middle income grouping of Roosevelt, Ballou, Anacostia, and McKinley, the per cent of the student body at each school in the honors curriculum ranged from 6.0 per cent at McKinley to 4.2 per cent at Anacostia. In the lower income grouping of Spingarn, Eastern, Cardozo, and Dunbar, the per cent of the student body at each school in the honors curriculum ranged from 3.9 per cent at Eastern to 0.0 per cent at Dunbar. (Plfs. B-16.)

This correspondence continues in the regular college preparatory curriculum but is not as exact as in the honors curriculum. Wilson and Coolidge have 75.1 per cent and 52.5 per cent of their student bodies in the regular college preparatory curriculum. The third school in the higher income grouping, Western, is replaced by McKinley as having the third highest per cent of its student body in the regular college preparatory program. McKinley is the lowest school in the medium income grouping.

The lower income group of Spingarn, Eastern, Cardozo, and Dunbar had the lowest percentage of their student bodies in the regular college preparatory program, ranging from 28.6 per cent at Eastern to 13.6 per cent at Spingarn. (Plfs. B-16.) The replacement of Western by McKinley, while appearing to be an exception to the observed correspondence, could be due to the fact that Western is an open school that received a substantial influx of pupils from outside its neighborhood boundary. (Plfs. N-9, N-7(c).) Pupils in the Wilson attendance area were ineligible to attend Western because Wilson is also an open school. (Plfs. N-9.)

The distribution of the per cent of the student body in the special academic program at a given senior high school is the same (in reverse) as the distribution noted in the regular college preparatory program. None of the Wilson student body was in the special academic curriculum while Coolidge had 5.1 per cent of its student body in that curriculum. McKinley had the second lowest per cent of its student body in the special academic curriculum with 4.9 per cent and again replaces Western. The lower income grouping had the highest per cent of their student bodies in the special academic programs. (Plfs. E-16.) The replacement of Western by McKinley in the distribution could be due to the influx of pupils to Western from outside neighborhood boundaries.

In the general curriculum, which contains half of the pupils in the District senior high schools, the only exception to the observed correspondence is that Eastern has a smaller per cent of its student body in the general curriculum than did Roosevelt during the school year 1964-65. (Plfs. B-16.)

Junior High Schools -

Generally, the same correspondence between income level and the per cent of a student body in a given track that was observed at the senior high school level also exists at the junior high school level.

Thirteen junior high schools offered honors programs during 1965-66, and twelve junior high schools did not (Plfs. B-2.) Neither of the junior high schools (0 per cent) that serve the lowest income neighborhoods, \$3,000 to \$3,999, had an honors program. Three of the nine junior high schools (33 per cent) that served the \$4,000 to \$4,999 income level neighborhoods had honors programs. Two of the five junior high schools (40 per cent) serving the \$5,000 to \$5,999 income level neighborhoods had honors programs. Two of the three junior high schools (67 per cent) serving the \$6,000 to \$6,999 had honors programs. All five of the junior high schools (100 per cent) serving neighborhoods with income levels above \$7,000 had honors programs. The income level of the neighborhood served by Jefferson Junior High School is not known. Jefferson had an honors program. (Plfs. F-3, B-2.)

There is no pattern relative to race in the offering of honors programs at the junior high school level. During 1965-66, Browne Junior High School had one white pupil and no honors program; Miller Junior High School had one white pupil, but it offered an honors program. Douglass Junior High School had four white pupils and no honors program; Banneker Junior High School had four white pupils, but it offered an honors program. Langley Junior High School had six white pupils and no honors program; Eliot Junior High School had five white pupils, but it did offer an honors program. Shaw Junior High School had eight white pupils and no honors program; Macfarland had eight white pupils, but it did offer an honors program. Randall Junior High School had thirteen white pupils and no honors program; Taft Junior High School had fourteen white pupils, but it did offer an honors program. Hine Junior High School had 34 white pupils and no honors program; Backus Junior High School had 33 white pupils, but it did offer an honors program. Stuart Junior High School had 38 white pupils and no honors program;

Sousa Junior High School had 21 white pupils, but it did offer an honors program. (Plfs. B-2, P-4.)

In the Elementary Schools -

As is true at the senior and junior high school levels, there is a correspondence between the income level of a neighborhood served by an elementary school and the availability of an honors program in that school. This is illustrated by the following chart which shows (1) the neighborhood income level; (2) the number of elementary schools serving neighborhoods at that income level; (3) the number of elementary schools serving neighborhoods at that income level that offered an honors program; and (4) the per cent of schools serving neighborhoods at that income level that offered honors programs

(1)	(2)	(3)	(4)
Under \$3, 000	3	0	0 per cent
\$3, 000 to \$3, 999	19	0	0 per cent
\$4, 000 to \$4, 999	38	3	8 per cent
\$5, 000 to \$5, 999	24	2	8 per cent
\$6, 000 to \$6, 999	16	4	25 per cent
\$7, 000 to \$7, 999	11	4	36 per cent
\$8, 000 to \$8, 999	3	3	100 per cent
\$9, 000 to \$9, 999	4	3	75 per cent
\$10, 000 to \$10, 999	4	4	100 per cent
\$11, 000 to \$11, 999	5	5	100 per cent
\$12, 000 to \$12, 999	0	0	- - - - -
\$13, 000 to \$13, 999	2	1	50 per cent
Over \$14, 000	1	0	0 per cent

[Source: Plaintiffs' F-2, B-4]

The chart shows a marked increase at the level of \$8,000 to \$8,999 in the per cent of schools offering honors programs. A slightly higher percentage of predominantly Negro schools (six of seven - 85.7 per cent) than predominantly white schools (ten of twelve - 83.3 per cent) offered honors programs at the neighborhood income level of \$8,000 and above. (Plfs. F-2, B-4, P-4.)

Over the entire income range, there were 29 elementary schools that offered honors programs during the 1965-66 school year. (Plfs. B-4.) Of these 29, 10 had predominantly white pupil populations and 19 had predominantly Negro pupil populations. (Plfs. P-4.) Twelve of the thirteen predominantly white elementary schools in the District serve neighborhoods with income levels in excess of \$9,000. (Plfs. P-4, F-2.) A higher proportion of white schools than Negro schools offered honors programs in light of the correspondence between neighborhood income level. Orr Elementary School is the only school with predominantly white enrollment that serves a middle income neighborhood (\$6,000 to \$6,999) and it did not offer an honors program during 1965-66. (Plfs. P-4, F-2, B-4.)

There is no evidence of any extra-academic reason why there are or are not special academic programs offered in the elementary schools of the District. As of October, 1965, there were 24 predominantly Negro elementary schools in which there were no special academic programs. These 24 schools served all income levels from \$3,000 - \$3,999 through to \$7,000 - \$7,999 and in addition served income levels of \$9,000 - \$9,999 (Bunker Hill) and \$13,000 - \$13,999 (Shepherd). These 24 schools ranged in size from 140 pupils (Grant) to 1,174 (Bunker Hill).

Of the 13 predominantly white elementary schools in the District, 11 of them did not have a special academic program in the school. These

eleven schools serve neighborhoods with income levels starting at \$9,000 - \$9,999 and up. The pupil population within these eleven schools ranged from 130 (Fillmore) to 724 (Lafayette). (Plfs. P-4, F-2.)

The two elementary schools having predominantly white pupil populations and having special academic programs were Hyde and Orr. Hyde Elementary School had an integrated special academic class with 4 white pupils and 3 Negro pupils. In the regular classes there were 93 white pupils and 18 Negro pupils. Hyde serves a neighborhood with an income level of \$9,000 to \$9,999. (Plfs. P-4, F-2.) Orr Elementary School had an integrated special academic class with 15 white pupils and 2 Negro pupils. In the regular classes there were 247 white pupils and 93 Negro pupils. Orr serves a neighborhood with an income level of \$6,000 to \$6,999. (Plfs. P-4, F-2.)

TESTING, ITS HISTORY, VALUE AND EMPLOYMENT NATIONWIDE
AND IN THE DISTRICT OF COLUMBIA PUBLIC SCHOOL
SYSTEM

Standardized Tests Are In Widespread Employment
In the United States for Sound Educational
Reasons

The introduction of standardized aptitude and achievement tests in the United States dates back to 1908 or 1910. Although general publication of such tests did not appear until 1920. Since 1920, the use of educational testing has so proliferated that in 1945, the first year the testing industry maintained sales statistics, it grossed \$2,000,000. In 1965, that figure became \$16,300,000 when approximately 200,000,000 standardized aptitude and achievement tests were taken by pupils in the elementary and secondary schools of the United States. (Tr. 3156-58.)

Harcourt, Brace & World, of which firm the witness Roger T. Lennon is Vice President and Director of its test department (Tr. 3138), publishes approximately 100 different tests. Those more widely known and used in the achievement area are the Stanford Achievement Test, the Metropolitan Achievement Test and the Evaluation and Adjustment Services of High School Tests. In the field of aptitude tests the firm published the Otis Quick-Scoring Mental Ability Series, the Otis Self-Administering Tests, the Pintner General Ability Test Series and the Metropolitan Readiness Tests. (Tr. 3148-49.)

Harcourt, Brace & World services from 15 to 20,000 school districts in the United States in the field of educational testing, an extremely high percentage of all the school districts in the United States. (Tr. 3148.)

Harcourt, Brace & World tests during the 1965-66 District school year were given at kindergarten, grade 1, grade 2, grade 6, grade 9 and grade 11 in the schools of the District of Columbia. (Tr. 3150.)

The National Defense Education Act of 1958 provided a significant amount of money for the special purpose of testing and guidance in secondary schools. That action represents a nationwide recognition by the Federal Government that the tests could be used advantageously to discover talent and that it was in the national interest to do so. Later, the Act was revised so that elementary grades were included for standardized testing at federal expense. (Tr. 3158-59.)

The Elementary and Secondary Education Act in Title I is directed to improve educational programs for underprivileged and requires the employment of standardized tests so as to help measure whether or not the programs under that title are efficacious. Federal funds are also provided in connection with the Manpower Development Training Act to support testing programs in order to assess the talents of unemployed adults and define their educational needs. (Tr. 3159.)

The Equal Opportunities Act also provides funds for testing and assessment of candidates for the Job Corps. There is widespread congressional approbation of the educational advantages to be acquired through the use of standardized tests. (Tr. 3159-60.)

Standardized Scholastic Aptitude and Achievement Tests Occupy A Valid Educational Function

An achievement test is a test that seeks to measure what a pupil has attained or achieved. It seeks to assess the progress of a pupil toward the attainment of some of the goals of school instruction. (Tr. 3151.)

A standardized achievement test is built and formulated upon an analysis of the courses of study of school systems throughout the country. The common goals, outcomes and elements in the particular subject

matter as they are represented in consensus are accepted by the test maker as the definition of goals of instruction. (Tr. 3152-53.)

The first and most obvious use of a standardized achievement test by a school system is an evaluation of the progress a pupil is making in his particular field of study (reading, spelling, arithmetic, etc.). The measure obtained is immediately beneficial to the teacher. (Tr. 3153-54.)

A second purpose of the use of standardized achievement tests by school systems is discovery of the particular strengths and weaknesses of the individual pupil. Thirdly, the standardized achievement tests provide a yardstick to the school administrator that measures the effectiveness of the instructional program. (Tr. 3154.)

A further distinct advantage of the standardized achievement tests exists in the fact that it measures the performance of each pupil against a single scale so that the academic growth of a child may be accurately measured. (Tr. 3154-55.)

The term aptitude tests does not have a precise definition in the language of the educational testing profession. They are tests which are special in the sense that they help an educator to judge the likelihood of success a student in a particular educational, occupational or training endeavor. The concept of the aptitude test should be derived chiefly from its use rather than the nature of its content, so that any test used as a predictor of educational achievement may be thought of as an aptitude test. Thus, standardized achievement tests insofar as they can be used to predict educational performance are also aptitude tests. (Tr. 3160-61.)

The term "intelligence test" and "scholastic aptitude test" may be used interchangeably. In the construction of a scholastic aptitude test the effort is made to include material that is less subject to the effect of

specific scholastic learning than is the case with achievement tests. Examples of this would be abstractions or the ability to perceive relationships. The measurement in these tests is accomplished by tasks that are not influenced by what a child is taught specifically in school. (Tr. 3170-72.)

The intelligence test in its early history constituted an attempt to measure a faculty considered permanent, constant, fixed and quite likely hereditary. (Tr. 3166.)

The current professional thinking in the area of intelligence tests considers that whatever is being measured by such tests is not an unchangeable characteristic of an individual, so that, among professional testing people, the definition of intelligence has come to mean that which the test measures, however variable that may be. (Tr. 3156-67.)

Commonly included in the content of intelligence tests are measures of nonverbal reasoning, usually through perceptual tasks and tasks where analogous relationships are presented in media other than words but where the inductive process called for is presumably the same. Frequently, the tests may include what appear to be straightforward vocabulary or arithmetic exercises. However, what is measured by these exercises is not the mere arithmetic skill or computation, but rather the conceptual process or problem analysis. (Tr. 3172-73.)

I.Q. stands for "intelligence quotient". It expresses a person's degree of mental maturity in relation to a person's chronological age. A child whose mental age is the same as his chronological age has the I.Q. of 100. Actually, the ratio is one. However, for convenience, the ratio is multiplied by 100, thus one becomes 100. An even more accurate expression of "an I.Q. of 100" reflects a child whose mental age is the

same as the mental age that is typical for children of his chronological age. (Tr. 3179.)

In addition to scoring of intelligence tests by an I.Q. result, a percentile range system is utilized. That system would reflect a score as representing the per cent of scores in a specified group that fall below the score in question. Thus, an I.Q. score of 100, which is an average, would separate the top half from the bottom half (or 50 per cent) and so an I.Q. of 100 is the same as a percentile range of 50. (Tr. 3181.)

No test is so reliable that a child will score exactly the same if he were given the same test today and tomorrow. The child's score might vary slightly. The testing industry has techniques that permit it to measure the likely amount of variation in the score. To discourage too literal an acceptance of a single test score, the result of the test is expressed in terms of a percental band, indicating that the child could have scored within this band of scores. (Tr. 3182-83.)

The more common use of tests labelled intelligence tests is to predict educational performance, therefore, such tests should be considered aptitude tests. However, such tests are not limited merely to their predictive value of academic achievement. (Tr. 3162.)

An intelligence test is of special assistance to a teacher in evaluating among pupils the level of attainment, speed of attainment, quality of understanding and ability of retention students bring with them into the classroom. Pupils do not possess the same skills in the area of cognition, curiosity, creativity, motivation, interest, etc. Thus, the teacher is able, as far as possible, to gear an instructional program to the level of skills possessed by individual pupils under his care. (Tr. 3168-69.)

The intelligence test is one important source of information in deciphering the varied skills a learner possesses. The intelligence test also reveals how the learner compares to the standard abilities important for the mastery of curricula necessary to meet the academic demands of higher education and basic to performance in a particular vocation. (Tr. 3169.)

A Pupil's Performance on a Non-Verbal Test of Complex Reasoning Will Most Likely Mirror His Performance on a Verbal Test

Classification of tests into verbal and non-verbal tests applies particularly to instruments that measure scholastic aptitude (intelligence tests). Obviously, achievement tests in history or reading are verbal per se. (Tr. 3183.)

A non-verbal test is one constructed to minimize dependence upon reading ability and the ability to manipulate verbal symbols. (Tr. 3184.)

It is important to distinguish between types of non-verbal tests. Some non-verbal tests measure visual or perceptual skills, not intellectual or cognitive abilities. Other non-verbal tests (similar to the ones used in Project Talent) measure complex reasoning functions. Those persons who perform poorly on verbal tests will also perform poorly on the latter kind of non-verbal tests. (Tr. 6266, 6276, 6363.)

Non-verbal tests were devised primarily to attempt to tap the potential of an individual who, due to foreign language backgrounds or for other incapacitating circumstances, possessed limited verbal performance. (Tr. 3230.)

The general rule from the experience of test makers is that persons who do poorly on verbal tests generally do equally poorly on non-verbal tests. (Tr. 3231.)

The belief abroad that there is a kind of compensatory mechanism operating in non-verbal tests whereby persons who do poorly on verbal tests would tend to improve their performance on non-verbal tests, is unfounded. (Tr. 3231.)

Thus, in general, there is a tendency for persons who are above average on the non-verbal tests to also be above average on the verbal test or, conversely, if a person performs below average on the one, the likelihood is his performance will be below average on the other. There are cases where some notable incapacity on the verbal test compares with a different and better performance on the non-verbal test. However, these cases are exceptional and relatively infrequent. (Tr. 3131-32.)

The predictive validity of non-verbal tests is significantly less than verbal tests when the subject matter sought to be predicted is success in school learning. (Tr. 3232.)

The excellence of verbal tests over non-verbal test instruments as predictors of school success is unsurprising, in view of the fact that the school curriculums are necessarily verbal. The tasks imposed by schools on pupils are overwhelmingly verbal tasks. Importantly, the tasks imposed by society upon one who seeks vocational excellence are also in large measure verbal tasks. (Tr. 3232.)

How well a test uncovers verbal competence is an important ingredient of any instrument used to predict success, scholastic or vocational. (Tr. 3232.)

Harcourt, Brace & World, the most prolific test publisher, has not experienced any recent trend to a greater or extended use of verbal tests. There appears no recent relative increase in the frequency with which non-verbal tests are given throughout the United States. (Tr. 3234-35.)

The reliability of a standardized test, in the technical sense, refers to properties of test content. Reliability is not a function of the norms of a test in any sense. Reliability relates to appropriateness of difficulty it provides the group in question. A standardized test is reliable if it yields dependable measures with relatively small errors of measurement. (Tr. 3436.) The test that behaves best technically does so in the sense of yielding the sharpest and most reliable discrimination if that test is of average difficulty for the group to which it is administered. Thus, the group examined gets about half the questions correct. If a test is so easy that the examinees get, for example, 90 per cent of the questions correct or, conversely, a test so difficult that only 5 or 10 per cent of the questions are answered correctly by that group, the test is less efficient as a measuring instrument, does not discriminate, obviously, as accurately, and hence is not a reliable instrument. (Tr. 3437-38.)

The earlier professional definition of test validity was determined by the extent to which a test measured whatever it was intended to measure. The more current professional thinking breaks down the validity of a test into a threefold concept:

(A) To what extent does the test sample the aggregation of accepted outcomes of a particular scholastic program?

(B) What is the degree of agreement between the test score and some other outside measure or standard used as a valid criterion of the thing sought to be measured?

(A further subdivision of B above concerns itself with the predictive validity of a test which answers the question how well will an examinee do in some future learning activity, or to state predictive validity another way, how closely do the scores on the test compare with some subsequent

measure of academic performance.)

(C) The construct validity of a test relates to the establishment of meaning of test scores by the development of a set of relationships of those scores or theoretical constructs or other measuring instruments. (Tr. 3438-40.)

The assessment of the validity of a test will depend upon the particular purpose to which the test is being used, whether concurrent, predictive, etc. (Tr. 3440.)

The predictive validity of a test is the extraordinary virtue it possesses in helping one to judge the likelihood of success the person tested will have in a particular educational program, occupation or training endeavor. (Tr. 3160.)

The College Board Examinations and Civil Service Examinations are good illustrative examples of standardized tests that are calculated to display predictive value because they attempt to forecast the performance of the person tested in a particular field of endeavor (success in college). (Tr. 3163.)

The predictive validity of scholastic aptitude or intelligence tests is derived from the fact that after repeated investigations of these tests in a great variety of school settings the performance on these tests by pupils correlates highly with measures of later pupil successes. This high correlation has been sufficiently well established so that educators are satisfied with the predictive validity of such tests. (Tr. 3354.)

The diagnostic value of a test is the ability of a test to provide an analysis of the specific strengths or deficiencies a student may have in a particular subject field. Thus, a reading achievement test may reveal with particularity the precise ability and disability of the person tested.

It is not uncommon then to classify the diagnostic value of the test as a sub-test factor of achievement tests. (Tr. 3164-65.)

Norms for Standardized Tests Are Developed from the
Test Results of a Sampling of Pupils That Reflects
the Complete Spectrum of Socio-Economic
Characteristics, But Race, As Such, Is
Not a Consideration Since It Has No
Correlation to Test Performance

The policy at Harcourt, Brace & World, which is typically the policy of other publishers of tests in the United States, is not to categorize and standardize population on social classes, such as middle class, lower class, or upper class, but rather on the basis of the socio-economic status and educational level of the group sampled. (Tr. 3385, 3389.)

The standardization population for standardized achievement tests is not composed of merely middle class white population. (Tr. 3242-43.)

The goal in the development of a set of norms for standardized tests is to provide a set of statistics that describe the performance on a test of a representative cross-section of pupils in American schools, grade by grade, age by age, or whatever the grouping is to be. The stress in the acquisition of standardized test norms is on selecting a group of school systems in which all pupils will be tested but which systems are representative of the group. The school systems selected by the test maker are drawn from various regions of the country, the communities of which run the gamut from the highest class suburb to the poorest metropolitan community or rundown industrial local. An attempt is made to acquire the complete spectrum of socio-economic status as well as a cultural index of the community. . . . (Tr. 3235-38.)

The publishing firm of Harcourt, Brace & World, in line with the practice of most test publishers, sets up a statistical model of the kinds

of school systems desired, the location of school systems, the national distribution with respect to socio-economic status as defined by median monthly income, cultural level as reflected by the average schooling of the adult population of the community, and the size of the school systems selected. (Tr. 3238, 3240.)

School systems that desire to participate in the acquisition of norms in connection with standardized tests constructed by Harcourt, Brace & World make available to that firm every regularly enrolled youngster in all grades. At least three consecutive grades within that school system are tested to insure against any inappropriate selectivity within the system. (Tr. 3238.)

Harcourt, Brace & World is presently developing a new edition of the Otis mental ability series to be called the Otis-Lennon Test. A special refinement in the acquisition of norms for that instrument is the employment of three matched panels of school systems having the desired socio-economic and cultural characteristics so that there is provided an equivalent panel of school systems in order to either replace or check the sampling acquired by utilization of the first panel of school systems. (Tr. 3239-40.)

In order to determine the socio-economic status of a particular school system, the test makers employ the census area served by the school district. Often, the school district and the census tract are coterminous. Again, a school district may include a number of various census tracts. In the latter case appropriate modifications are made. Fundamentally, the test maker chooses information descriptive of median monthly income for the area served by the school system. (Tr. 3243.)

Race, as such, is not an element that is separately considered in the acquisition of the norms for standardized tests. Rather, reliance upon

the requirement that every pupil enrolled in the system selected will be tested insures that a full representation of that system is made. It is the common attitude of test makers for both scientific and practical reasons that if the factors of socio-economic status and cultural status are held constant, that race or ethnicity is not significant because of the high degree of correlation between school performance and the indices of socio-economic and cultural status. (Tr. 3240-42.)

The main factor in determining the cultural level of the area served by a school system is the average level of schooling attained by the adult population. This information is reported in the computations of the census and correlates well with student performance on achievement tests and intelligence tests. (Tr. 3245.)

The more complete development of every youngster in school is more likely to happen when there is in operation in the schools the use of standardized tests. (Tr. 3288.)

The administration of standardized tests by teachers is not a difficult endeavor. Interpretation of such tests, however, is more difficult and must be integrated and coordinated with all the other school sources of information that a teacher has concerning a child. (Tr. 3277-78.)

The manuals that accompany the standardized tests provide information to the teachers in connection with the pupil assessment and interpretation of test results. (Tr. 3278-79.)

In the employment of standardized tests the school system including the classroom teacher, the guidance counselor, the superintendent and administrators acquire a source of information about students' talents, accomplishments and progress and about the efficacy of the educational program that could be obtained in no other fashion. (Tr. 3285-86.)

Standardized tests provide an independent yardstick that complement the judgment teachers or the school administrative staff otherwise make concerning students. (Tr. 3286.)

The use of standardized tests provides a method by which a school system can assess its performance in comparison to other school systems. (Tr. 3286.)

While standardized tests and their interpretation may not provide perfect measurements of children, the use of a sensible system of standardized testing provides relevant and useful information about pupils in the absence of which the school is likely to do considerably less an effective job in placement of pupils, discovery of their talents, adapting instruction methods to their needs and evaluating their progress. (Tr. 3286.)

The employment of standardized tests is a necessary adjunct to the mass educational efforts that are afforded in the United States. These tests permit, against a backdrop of enormous mass education, attention to be paid to independent requirements of pupils. (Tr. 3287.)

The value of standardized tests is pragmatically acknowledged by the phenomenal growth of the testing industry (to the extent that in some states their use is mandated), their widespread approval on the educational scene by spontaneous efforts of educators in employing them, all in spite of a dearth of promotional endeavor. (Tr. 3287-88.)

Standardized tests are among the most important, evaluative and prognostic tools that educators have at their disposal. (Tr. 3455.)

The Use of Standardized Tests By A School System
Containing Many Culturally Disadvantaged
Pupils Serves to Benefit the Deprived
Child Individually and the School
District Generally

While the economic background of a pupil does not equate with cultural disadvantage of that pupil, the culturally disadvantaged are to be found with far greater frequency in homes operating under financial hardship and economic deprivation. Parental disinterest concerning the intellectual growth of the child contributes to the pupil's cultural disadvantage, as does a lack of human warmth on the part of the parents that inculcates a feeling of inferiority and insecurity. Taken together, these facts often add up to cultural disadvantage or deprivation. (Tr. 3245-47.)

A culture-free test does not exist. The concept of a culture-free test is a contradiction in terms because no test could be constructed that could totally ignore the culture of the milieu in which it was made. If it were possible to build a culture-free test, the instrument would have no utility. (Tr. 3255.)

The performance of students on standardized tests, whether aptitude or achievement, may be attributable to a variety of influences including native environment, quality, extent and amount of training, personal motivation, environmental support and level of aspiration. (Tr. 3291.)

The contribution made by environmental factors to test performance is unique in every circumstance because it is most unlikely that identical environmental factors would be present in any two pupils. (Tr. 3292.)

The task of the conscientious educator is to ponder what lies behind test scores. Good schools will employ well qualified persons to use good tests as a means of freeing the disadvantaged child from as many of his handicaps as possible. (Tr. 3436.)

The standardized test also serves an important function in that it identifies talent in both the favored and deprived student. The test result can display objectively the peculiar ability an individual pupil may possess. The test achieves that result apart from subjective criteria such as the child's physical appearance, personality, teacher predilection, etc. Once the talent is discovered, it may be exploited to the benefit of the pupil. The employment of standardized tests is indispensable for optimum and accurate placement within various pupil ability groupings. (Tr. 3254.)

Placement of a student in a particular category of pupil ability grouping should not totally rely on the test score alone, because, along with other factors, the test score for placement purposes should, as always, be interpreted. (Tr. 3254.)

The test anxiety the examinee experiences in undergoing a standardized test is not an important source of variation on test performance. (Tr. 3279-80.)

The anxiety in a student a test provokes can even be a beneficial feature of a test when what is attempted to be measured concerns itself with test anxiety. (Tr. 3281.)

The average scores on intelligence tests is in gross agreement with socio-economic status. Even from the earliest days of intelligence tests, performance on tests by examinees has displayed that children of professional parents generally do best, children of parents in business and management do somewhat less well as a rule, children of parents from blue collar backgrounds do still less well, and children from parents who are unemployed do least well. (Tr. 3247-48.)

Despite the general agreement between performance on intelligence tests by pupils from similar socio-economic categories on average scores,

there is a large overlap of superior performance on such tests by pupils from advantageous socio-economic situations and children from deprived socio-economic backgrounds. Talent is available at every source. (Tr. 3255.)

One specific use of a standardized test in relation to a culturally disadvantaged examinee is that it will be indicative of an area wherein he is academically undernourished. Since diagnostic measurement is one of the particular purposes of the test, it cannot be said to be unfair to that child. (Tr. 3249-51.)

Conversely, if a standardized test could be designed so that it would not reveal the educational deficit under which a student labors and showed him to be as educationally endowed as a person more favorably circumstanced, the test would be inaccurate and far less useful. (Tr. 3252.)

It may be that the content of standardized tests includes matter that some children have had greater opportunity to learn and acquire than other children. Experts in testing declare as a maxim that tests results should be interpreted. A great variety of other information in addition to the test result should be taken into account in that interpretation. (Tr. 3250.)

There is no evidence in the educational testing profession that erroneous test interpretation is more than rare. (Tr. 3455.)

There is Such A High Degree of Correspondence Between
the Social, Economic and Cultural Background of A
Pupil and His Test Performance That for Stand-
ardized Test Purposes, If Those Factors
Are Controlled, the Race or Ethnicity
of the Examinee is Unimportant

Race or ethnicity, as such, is not a factor included in the standardization of tests constructed by Harcourt because the factors of socio-economic

status and educational level of parents are much more highly correlated to test performance whether the examinee is white or non-white.

(Tr. 3416-17, 3424.)

If a group of examinees were 90 per cent Negro, of whom at least 50 per cent came from families who had an annual income of \$6,000.00 or less and that figure is denotive of something less than average economic status, the fact that performance of a person who underwent standardized tests of aptitude and achievement would likely be somewhat lower than for the national population, derives not from any racial characteristic of the examinee but rather from the experience of test makers that there is a definite association between cultural and socio-economic situation and performance on standardized tests. (Tr. 3392-3408.)

At any given income level, Negro children achieve as well as white children. (Tr. 6260, 6264-65, 6309.) Income of the pupil's family and not his race is the determining factor in his achievement level. (Tr. 6318, 6321, 6324.)

There exists a remarkably high degree of correlation between average scores of participants on standard intelligence examinations and the socio-economic environment from which they emanate. (Tr. 3247-48.)

Harcourt, Brace & World Company and other test publishers ignore the factor of race in defining norms for standardized tests because there are factors (socio-economic status and educational level of parents) which are more directly related to performance upon tests. Whatever variance in test results that may be associated with race or ethnic classification is taken care of if socio-economic status and educational level of parents are controlled. (Tr. 3555.)

The correlation between aptitude tests and achievement tests is equally high whether the examinees being tested are Negro or white. (Tr. 3366.)

Similar studies of the predictive value at the college level of College Board Examinations fail to reveal any significant differences in the correlation for Negro and white students. (Tr. 3367.)

The Employment of Standardized and Other Tests
in the District of Columbia is in Keeping with
Contemporary Sound Educational Practice and
Reveals that the District Performance is Better
than Objectively Expected Levels of Achievement.

The Metropolitan Readiness Test, non-verbal in nature (Tr. 3233), given in the District of Columbia in the first grade in 1965-66, is most fruitfully considered an aptitude test. This test does not seek to measure what the child has learned as a result of any formal school instruction but rather to identify the youngsters who seem to have reached a sufficient level of maturity so that their progress in early form reading instruction will be rapid as well as delineate those children who need to be aided regarding certain fundamental visual, auditory or perceptual skills. It is definitely an aptitude test because of its prognosis and predictive values. (Tr. 3174, 3175.)

The Metropolitan Readiness Test contains the same degree of predictive validity for Negroes as it does for white students. (Tr. 3257, 3263) (Dfts. Exhibit No. 58.)

The accuracy of the Metropolitan Readiness Test as a predictor of how well scholastically both Negro and white students will do later on is based upon results of those tests with measures of reading proficiency obtained a year later for those same students. (Tr. 3269.)

The Stanford tests administered in the District of Columbia in the sixth grade in 1965-66 are verbal and standard achievement tests. In constructing its Stanford Achievement Tests, Harcourt, Brace & World tested 800,000 pupils across the country, a number larger than needed to provide the kind of reliability needed in such tests. (Tr. 3239.) The Otis test, given in the District of Columbia school system in that year at the sixth grade level, is verbal and a scholastic aptitude test. The Metropolitan test in grade six is verbal and a standardized achievement test. (Tr. 3175, Pltfs. B-10.)

Tests of General Ability, the so-called "Toga" tests, administered in the sixth grade, are scholastic aptitude tests, as are the School and College Ability Tests administered in Grade 4. The School and College Ability Tests given in Grade 9 are, likewise, aptitude measures.

The Tests of General Ability in Grade 7 and Tests of Educational Ability in Grade 9 are also aptitude tests. School and College Ability Tests given in Grade 11 and Tests of General Ability given in Grade 11 are also classified as aptitude or scholastic aptitude tests. The Flanagan Aptitude Classification Test given in Grade 10 or 12 is also an aptitude examination. (Tr. 3176, Pltfs. B-10.)

A fairly common pattern in an average school situation would include a readiness test in the first grade, some measure of mental ability or scholastic aptitude in Grades 3 and 6, and perhaps a differential aptitude test in Grade 9 or 10. (Tr. 3184.)

At the elementary level, Harcourt, Brace & World furnishes more than half the District city-wide tests; at the junior high school level, less than twenty percent of those tests; and at the senior high school level in the District of Columbia, a minor fraction of such tests.

Of all the tests given in the District of Columbia public school system in the school year 1965-66, only the Otis Quick-Scoring Mental Ability Test results in an I. Q. score. (Tr. 3176, 3177.)

The number of Otis Quick-Scoring Mental Ability Tests used throughout the United States in the year 1965 numbered three and a half to four million tests. (Tr. 3556, 3557.) During the years 1960 through 1965, the popularity of the Otis Quick-Scoring Mental Ability Test has remained constant. (Tr. 3557, 3558.) The administration of the Otis intelligence test in the United States continues from 1918, when it was first introduced, until today. (Tr. 3560.)

The editions of the Otis Quick-Scoring Mental Ability Test employed city-wide in the District of Columbia public school system in 1965-66 are editions issued in 1954. The latter were updated from the initial publication of the test in 1937. The standardization of the Otis test goes back to the publication of the first forms of the series. With the issuance of the new forms in 1954, there was a recheck by the publisher to ascertain a verification of norms and the norms were validated. (Tr. 3368, 3371.)

In 1963, Harcourt, Brace & World Publishing Company ran a comparison between the Stanford Achievement Test and the appropriate level of the Otis intelligence test. Every pupil who was involved in the standardization of the Stanford test in 1963 (800,000) also took the appropriate level Otis test. Thus, in 1963 a completely new set of normative data was obtained for the Otis series in the sense that the Otis test was being newly evaluated against the new Stanford test. The result of the 1963 program at Harcourt disclosed that pupils were doing better on the Otis test than they had been at the time of the original standardization in 1937. If Harcourt had been norming the Otis test on the basis of the 1963 data, there would have been produced a set of norms more difficult than the set of norms employed in the standardization of the Otis test in 1937. (Tr. 3369-3372.) The reason the Otis intelligence test yields today an I. Q. result somewhat higher than what would have been the result 30 years ago, when it was first introduced, is that the norms for that test acquired in 1937 slightly underestimate the norm of today's students. (Tr. 3566.) The Otis Quick-Scoring Mental Ability Test used in the District of Columbia and given in the sixth grade during the year 1965-66 yields an I. Q. result that is judged by its publisher to be six or seven points higher than it would be if the test were normed on today's population. (Tr. 3515, 3521.) Hence, the appearance of the new Otis-Lennon Test. (Tr. 3370.)

The only possible discrepancy in the I. Q. result of the Otis test as far as the student in the District's track system is concerned, and insofar as the I. Q. score is considered, inter alia, as an indicator for curriculum sequence placement, would be misplacement upwards (assigning the student to a more difficult curriculum sequence than in which he belonged, or retention in a sequence beyond that of his abilities). (Tr. 3515.)

Teachers country-wide take into account I. Q. results in making their determination concerning the educational goals reasonably obtainable by individual pupils and the rate of progress among pupils that may be predicted in pursuit of those goals. (Tr. 3569, 3570.)

District Performance on Standardized
Tests Exceeds Expected Levels
of Achievement

The reading achievement level of District of Columbia pupils is a high reflection of their intelligence quotient, as measured by the Otis IQ Test. (Dft. 117, Tr. 6247, 6249.) The distinct relationship between IQ performance of students and achievement level is typical of most school systems. (Tr. 6249.) This is true because the Otis IQ Test, like all intelligence tests, measures the same thing reading achievement tests measure, general academic achievement in verbal skills. (Tr. 6271, 6279-80, 6297.)

The Otis IQ Test is a verbal test (Tr. 6271) written in standard English. (Tr. 6283.) A child's ability to read standard English will affect his score on the Otis IQ Test. (Tr. 6272, 6283.)

A standardized intelligence test measures developed skills in the use of words, vocabulary and sentences. It does not measure any real, inborn, innate intelligence. (Tr. 6279, 6291.) It is meant to measure skills in standard English. School programs are platformed on skill or the lack of it with the use of standard English. (Tr. 6286.)

Standardized intelligence tests and reading achievement tests are used because to be successful in American life, whatever the race or social class, children need to know standard English and grammar. (Tr. 6295-A, 6280.)

Intelligence may be defined in the testing profession generally as a group of broad, developed skills that are related to school work of the normal academic, liberal arts nature, and the Otis IQ Test measures this intelligence. (Tr. 6294.)

There is virtually no correlation between the per pupil expenditure for an elementary school building and the reading achievement level of the pupils within that school building in the District of Columbia. (Tr. 6253, 6307; Dfts. 118.)

At the elementary school level of the District schools, there is a discernable relationship between the racial component of a school and the amount of per pupil expenditure in that school. (Tr. 6326.)

Per pupil expenditure varies because a school is under utilized, causing the production cost per unit to increase. (Tr. 6328.) The main reason for under utilization is population movements. (Tr. 6328.) As with per pupil expenditure, there appears to be no particular academic advantage in being in an under utilized school. (Tr. 6328.)

And conversely, while there is a correlation between overcrowding in elementary schools and Negro enrollment, it has no effect on academic achievement. In cases where the schools are serving children at a given income level, the achievement is the same, regardless of the degree of crowding. (Tr. 6329.)

There is a moderately high relationship between the proportion of white pupils in an elementary school in the District and the reading achievement level within that school (Tr. 6255-A; Dfts. 119), but the real determining factor of reading achievement level is the income of the pupil's family, not his race. (Tr. 6256-57, 6318, 6321, 6324; Dfts. 120.)

At any given income level, Negro children in the District, as elsewhere, achieve as well as white children. (Tr. 6260, 6264-65, 6309; Dfts. 120.)

The Negro pupil will more often come from a family with a lower income level than will the white pupil. (Plfs. V-9.) Hence, reading Defendants' Exhibits 119 and 120 together, as they must be for accurate

interpretation, if family income is held constant, race is not a factor in determining the achievement level of the students. (Tr. 6321.)

The fact that income and not race is the indicative factor of academic achievement within the District elementary schools is not limited to an examination of Defendants' Exhibits 119 and 120 alone. It is the result also of statistical, multiple regression studies, wherein, with the aid of a computer, some twenty to fifty statistical aspects of a child and his total environment are considered. The same study was conducted in Project Talent with the same result as discovered locally. (Tr. 6316-17, 6323-24.)

The factors considered in the multiple regression study included the age of the school building, the ratio of pupils to capacity, the presence or absence of a library, the per pupil expenditure, the number of free lunches within the school, the number of special programs within the school, the crime rate in the census tract wherein the school was located, the level of education of the adults within the census tract and other census tract variables. (Tr. 6318.) When race was added to this predictive system, it had virtually no effect upon the accuracy of the predictions of achievement. (Tr. 6320.)

Project Talent is a national survey of the talents of American youth funded by the Office of Education and several other Federal agencies. (Tr. 6236.) It is a continuing program designed as a testing and twenty-five year follow-up survey. (Tr. 6237.) The original development and test phase cost \$1.5 million and to date the funding is of the order of two or three million dollars. (Tr. 6238.)

Project Talent developed a battery of tests over a two-year period, with the assistance of an advisory committee of thirty specialists.

(Tr. 6239.) The original testing was done in 1960, when approximately 500,000 secondary school pupils were given two days of tests. (Tr. 6237, 6277.) The tests were given to every child within a particular school. (Tr. 6338.)

Project Talent surveyed 5 per cent of the secondary schools in the country, public, parochial and private schools, segregated and desegregated. (Tr. 6268, 6346.)

Dr. John T. Dailey was the senior full time staff person assigned to Project Talent as its program director from 1958 to 1964. (Tr. 6236.)

All nine schools in a representative sampling (Tr. 6263, 6339) of the twenty-five District junior high schools scored higher in a Project Talent reading comprehension test than approximately 100 schools (Tr. 6335-A) in the States of Delaware, Maryland, New York, New Jersey and Pennsylvania having 30 per cent or more Negro pupils. (Tr. 6264, 6358; Dfts. 121.) On the average, the District junior high schools performed twice as well as the comparative schools in reading comprehension. Tr. 6264; Dfts. 121.)

There was a higher concentration of Negro pupils in the District schools than its competitors. Each Project Talent school had a 30 per cent or more Negro pupil population, whereas each District school had a 48 per cent or more Negro pupil population. (Tr. 6349, 6359; Dfts. 121, PKs. P-4.)

The extraordinary comparative achievement of the District schools is probably explained by the fact that the District of Columbia has a higher blend of middle class and upper class Negro families than other communities represented by the Project Talent schools. (Tr. 6347.)

The District schools are teaching their pupils to read at a level somewhat higher than the basic raw material of the pupils the system

receives as measured by abstract reasoning. (Tr. 6266, 6268-69; Dfts. 122.)

The column designated "Reading" in Defendants' Exhibit 122 displays results obtained on a Project Talent paragraph comprehension test. (Tr. 6263, 6265.) It is the average performance of the nine junior high schools shown in Defendants' Exhibit 121. (Tr. 6267-68.) The reading test measures what is taught at school and so has more relationship to the adequacy of the school program than "Abstract Reasoning". (Tr. 6362.)

The column designated "Abstract Reasoning" reflects the scores of the pupils in the same District junior high schools in a non-verbal test developed by Project Talent and designed to measure complex reasoning ability. (Tr. 6265, 6360.) "Abstract Reasoning" measures the quality of the raw material a school receives, and is a reflection of the pupils' home environment, not of their schooling. (Tr. 6347.)

Defendants' Exhibit 122 shows that the District's pupils do as well as any school in the country in abstract reasoning regardless of the racial composition of the student body. (Tr. 6269.) If pupils are stimulated at home and develop well at home before the school years, this development will show up as an ability to do abstract reasoning which will in turn manifest itself in the pupils' ability to read in school. (Tr. 6364.)

The most overwhelming opportunity for children to learn standard English exists in a home environment where standard English is spoken in the formative years of the child. (Tr. 6376.) When children have learned a dialect of English, not standard English in their formative years, it is very difficult to alter the trend and teach standard English in the schools. (Tr. 6378.)

The key to reading ability is verbal stimulation in the home. (Tr. 6382.) It is important to teach children the use of standard English before four years of age. (Tr. 6383.)

Local Norms Provide An Added Educational Advantage In
Identifying Student Performance and The District
School System Is More Advanced Than
Comparable Systems in Their
Procurement

The District of Columbia is a racially unique school system.
 (Tr. 6295-C.)

It is helpful in understanding the total educational status of a child to place him in as many competitive backdrops as possible. His relative standing in class, his own school, among children from his own neighborhood, the entire school system, and the nation are beneficial in that determination. The advantage that local norms have over national norms and vice-versa, depends upon what kinds of judgments are trying to be made through the use of tests. These judgments of students may be either diagnostic or predictive. (Tr. 3492, 3493.)

A compilation of local norms would employ the same methodology and statistical analysis as would be pursued in national norms.
 (Tr. 3490.)

The District is in present pursuit of not only the acquisition of local norms as described and recommended in the publication of the American Psychological Association, "Standards for Educational and Psychological Tests and Manuals" (Tr. 6396), but also of norms of such specialty to encompass each District pupil regardless of his socio-economic surrounding or school experience. (Tr. 6389.)

The District will possess such norms by the end of 1966.
 (Tr. 6389.) Upon receipt of such norms, the District will be more advanced than most comparable school systems as far as flexibility of local normative standards for students. (Tr. 6390.)

SCHOOL DROPOUTS

A dropout is a pupil who has left school for any reason, other than to attend another school, before receiving a high school diploma.

(Tr. 515.) District children are obliged to attend school until the age of sixteen. (Sec.31-201, D. C. Code, 1961 Ed.) Children under 16 who defect from school are usually returned by the efforts of the school, the attendance department, or the courts. (Tr. 515-17.) The dropout of most concern in the District, is the child over 16 and free from the legal compulsion to attend school. (Tr. 519.) The dropout rate tends to be most pronounced just after pupils reach the age of sixteen. (Tr. 530.)

The District School System Has Reduced the Dropout Rate

The District school system has made substantial progress in combating dropouts, but the problem continues. (Dfts. 45.) The dropout problem in the District school system mirrors a national problem.

The National Education Association has adopted the concept of "holding power" as a measure of the ability of a school system to keep children in the schools until graduation. (Cf. "Note" in Dfts. 45.)

"Holding power" represents the per cent of high school graduates over the number of pupils in that class three or four years earlier, in the ninth or tenth grade. For example, if there were 100 graduates of the class of 1966 and that class numbered 200 pupils during the school year 1963-64, when these pupils were tenth graders, the holding power of the school system for the class of 1966 would be expressed as 50 per cent.

In 1963 the holding power of the District schools for the class of 1963 was 63.14 per cent a retention better than the holding power of the cities of Detroit and New York. Since 1963, the holding power of the

District school system has risen steadily to 65.75 per cent in June, 1964, to 66.93 per cent in June, 1965, and to 67.2 per cent in June, 1966. (Dfts. 45).

The Four-Track Curriculum is One
of Several Educational Programs
in the District Schools That is
Responsible for the Decline
in the School Dropout Rate

The principal reasons given for dropping out of District schools are to accept employment, lack of interest, a likely aftermath of academic difficulty, (pages 81-82, Plfs. B-11, Tr. 525), commitment to institutions, and serious illness and pregnancy. (Plfs. C-4, C-13.) The first two reasons constitute voluntary withdrawals, and the last two reasons constitute involuntary withdrawals.

Defendants' Exhibit 46 is evidence that the four-track curriculum increases the holding power of the District school system by challenging 'lack of interest'. The years listed in Defendants' Exhibit 46 are as of the time of graduation, i.e., June of a given year. The bar to the left in any column-year represents the holding power of the District schools. The bar to the right represents the Negro enrollment at the beginning of the 12th grade. For example, looking at the column-year 1965, meaning June, 1965, the figure of 66.9 per cent holding power indicates that 66.9 per cent of the pupils that entered the 10th grade in October, 1962, were graduated in June, 1965. The figure of 74.9 per cent in the column-year 1965, is the per cent of the class of 1965 that was Negro when the annual enrollment by race was taken in October, 1964, when these pupils were beginning the 12th grade. (Tr. 2595-97.) Statistics on the race of District graduates are not maintained by the administration. (Plfs. T-2.) It follows that the number of Negro graduates has increased when it is considered that the per cent of the 12th grade that is Negro has doubled between October, 1952, and October, 1964.

The left bars show that the holding power of the District school system began to decline in June, 1955, the first full year of school desegregation. The decline continued until the class of 1959 was graduated. It was the introduction of the four-track system into the District schools that was able to reverse the decline. The impact of the track system on dropouts not only arrested the decline at 50 per cent but reversed the trend to a figure of 56.6 per cent. The track system was introduced to the tenth grade in October, 1956, extended to eleventh grade the following year, and extended to all three senior high school grades in October, 1958. The first class that had enjoyed the four-track curriculum throughout its senior high school career was the class of June, 1959, the class that marked the upswing in the District schools' holding power.

Following a slight leveling off in June, 1960, the holding power of the District schools has improved steadily through June, 1965, to 66.9 per cent. The figure has risen to 67.2 per cent in June, 1966. (Dfts. 45.) The increase in holding power should be compared against a background of a continuing increase in Negro enrollment where the current problem of the disadvantaged pupil and the dropout are more likely to be found. (Dfts. 124.)

A work-scholarship program offered by the District schools benefitted approximately 1774 pupils during 1965-66. (Tr. 2632-33.) These pupils were able to earn money while remaining in the regular day school, (Tr. 2633), thereby curbing the desire to withdraw from school to accept employment. Economic aid scholarships and pocket money is also available. (Tr. 537; Plfs. B-11, pages 82-83.)

Annually since the summer of 1963, members of the school system have conducted a Summer Recruitment Program contacting dropouts over the summer months in an effort to discover the cause for

their withdrawal, to meet the cause, if possible, and to encourage the pupil to return to the classroom. Over the summers of 1963, 1964 and 1965 a total of 89 people have been involved in these surveys. (Plfs. C-22; Dfts. 44.)

The school system has persuaded some dropouts to return to the classroom to complete their high school education. During the five year period from 1960-61 through 1964-65, 4,227 of the 7,879 pupils who withdrew from senior high school during that same period, have returned to school for the purpose of receiving a diploma. Thus, over half the number of those who withdrew from high school between 1960-61 and 1964-65 have returned to school to receive a diploma. (Dfts. 44.)

The returning dropouts can attend evening classes, the Armstrong Adult Education Center, the Stay Program or regular day classes. The Twilight Program (Tr. 2630-31) and the Stay Program (Tr. 2634) give to school dropouts the opportunity of continuing their education without the necessity of returning to the regular day school classes, for whatever the reason, including a daytime job or inability to adjust to the regular school routine. Summer school programs are also offered. (Tr. 2631.)

The District school system operates the Webster School for unwed mothers. There pregnant girls may take regular instruction in school until they are able to return to the regular day schools. Without this service, they would be forced to leave school and impair the continuity of their education. (Tr. 2629-30.)

Finally, in an effort to apply a technique of prevention rather than cure, the District's Pupil Personnel Service Office is operating a program to identify and administer to pupils who are dropout prone. Twenty thousand pupils were identified and will receive special attention from a staff numbering 141 members. (Plfs. C-23; Tr. 2628, 588-589.)

Index to Witnesses Relied Upon
For Findings of Fact

- Dr. George B. Brain - Dean of the College of Education, Washington State University; President of the American Association of School Administrators. 1965-66; Superintendent of Schools. Baltimore, Maryland, 1959 - 65; Protestant Man of the Year, National Conference of Christians and Jews. Qualifications from Tr 5014-5021. Curriculum Vitae admitted in evidence as Defendants' Exhibit 100. Testimony from Tr. 5021-6016.
- Boise L. Bristol - Statistician, D.C. Public School System, 1940 to present. Testimony from Tr. 2470-2604
- Dr. Joseph M. Carroll - Assistant Superintendent for General Research, Budget, and Legislation. D C Public School System, 1963 to present; Doctors Degree, Harvard University. in educational administration. Testimony from Tr. 2668-2756, 3776-3822, 3829-3985.
- Dr. John T. Dailey - Research Professor of Education, George Washington University; Program Director, Project Talent, University of Pittsburgh, 1958-1964; Former President, Military Psychology Division, Division 5, Evaluation

and Measurement, American Psychological Association; A Member of the President's Committee on Mental Retardation. Qualifications from Tr. 6232-6244. Testimony from Tr. 6245-6396.

Nathaniel R. Dixon -

Principal of the Scott Montgomery and Morse elementary schools, New Jersey Ave. and 5th St. at P and R Sts., N.W. respectively, 1959 to present; Elementary School Teacher, D.C. Public School System, 1940-1959, including Division II schools prior to desegregation. Testimony from Tr. 6077-6217.

Dr. Carl F. Hansen -

Superintendent of Schools, D.C. Public School System, 1958 to present; Assistant Superintendent in charge of Secondary Schools, 1955-58; Assistant Superintendent in charge of Elementary Schools, Division I, 1947-55. Charged with curriculum planning for Divisions I and II, 1947-55; Doctor of Education Degree, University of Southern California. Testimony from Tr. 36-267, 304-504, 511-574, 581-651.

John D. Koontz -

Assistant Superintendent in charge of Secondary Schools, D.C. Public School System, 1958 to present; Teacher, Assistant

Principal, and Principal, D.C. Public School System, 1939-1958, including Division I schools prior to desegregation; Masters Degree, George Washington University. Testimony from Tr. 2606-2663, 2773-2907, 2949-3024.

Dr. Roger T. Lennon -

Vice President, Harcourt, Brace & World, New York, Director of the Test Department; Secretary - Treasurer, Division 5, Evaluation and Measurements, American Psychological Association. 1960-63. Qualifications from Tr. 3138-3147. Curriculum Vitae admitted into evidence as Defendants' Exhibits 54-57. Testimony from Tr. 3147-3571.

Edith A. Lyons -

Assistant Superintendent in charge of Elementary Schools, D.C. Public School System, 1954-1965; Assistant Superintendent in charge of Elementary Schools, Division II, 1952-54; Teacher, Supervisor of Instruction, Principal, Supervisory Principal of the Northeast, Southeast, and Southwest Schools, D.C. Public School System, Division II, 1915-1952. Testimony from Tr. 3027-3123.

Teresa B. Posey -

Principal of Maury Elementary School.
13th and Conn. Ave., N.E., 1959 to present;
Elementary School Teacher, D.C. Public
School System, 1948-59, including Division
II schools prior to desegregation; Masters
Degree, Catholic University; Board of
Education, Archdiocese of Washington;
With her husband, a recipient of the
Richardson Award, D C Federation of
Civic Associations, Inc for dedicated and
distinguished service in the field of the
humanities. Prior recipients have been
Thurgood Marshall, Philip Randolph.
Robert Kennedy, and Carl Hansen
(Tr. 6076.) Testimony from Tr. 3995-
4099, 6019-6077.

Granville W. Woodson -

Assistant Superintendent in charge of the
Department of Buildings and Grounds.
D.C. Public School System, 1962 to
present; Master of Science Degree. Howard
University. Testimony from Tr. 3579-3772

CONCLUSIONS OF LAW

1. In order that this Court assume jurisdiction over matters relating to public educational administration, plaintiffs must demonstrate a deprivation of their constitutional rights caused by the action of defendants. Plaintiffs having failed to show such a deprivation by defendants, this Court, as a matter of law, lacks jurisdiction in this cause of action.

2. The Court may not substitute its judgment for the judgment of defendants in matters of discretion and policy relating to educational administration, without a showing by plaintiffs that defendants have acted in an illegal, arbitrary or capricious manner. As a matter of law, no such showing has been made by plaintiffs and, therefore, the Court will not substitute its judgment for that of the defendants herein.

3. There is no constitutional duty on the part of defendants to undertake affirmative action to achieve racial balance in the schools of the District of Columbia when racial imbalance exists as a result of economic or neighborhood patterns and not as a result of actions of defendants.

4. Plaintiffs have failed to prove that defendants have acted illegally, arbitrarily, or capriciously in the exercise of their administrative functions. The record before this Court demonstrates that defendants have exercised their administrative and managerial functions in a reasonable and rational manner and in keeping with sound and accepted educational practices.

5. The employment by the District of Columbia school authorities of the "track system" method of pupil ability grouping and their adoption of the neighborhood school concept are, as a matter of law, from the evidence on this record, legitimate functions of educational administration, and do not constitute a violation of plaintiffs' constitutional rights.

6. Plaintiffs have failed to prove that they are members of the class described in the complaint.

7. Plaintiffs lack standing to sue in this cause of action.

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Corporation Counsel, D. C.

John A. Earnest
JOHN A. EARNEST,
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Attorneys for the Defendants

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing Findings of Fact and Conclusions of Law was mailed, postage prepaid, to Jerry D. Anker, Esq., 1001 Connecticut Avenue, N. W., Washington, D. C., and William M. Kunstler, Esq., 511 Fifth Avenue, New York, New York, Attorneys for Plaintiffs, and to Joseph M. Hannon, Esq., Assistant United States Attorney, Attorney for defendant Judges, United States Court House, Washington, D. C., this 21ST day of December, 1966.

James M. Cashman
JAMES M. CASHMAN,
Assistant Corporation Counsel, D. C.,
Attorney for the Defendants,
District Building,
Washington, D. C. 20004

DEFENDANTS' RESPONSE TO PLAINTIFFS'
PROPOSED FINDINGS OF FACT

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Preliminary Statement

Not all of plaintiffs' findings of fact will be responded to by defendants. Failure to respond to a finding should not be taken as agreement with plaintiffs' particular finding much less with the particular wording of that finding. Defendants' decision not to respond may stem from a belief that the finding is inconsequential to the issues in this lawsuit or from a conviction that the finding is without merit and does not require reply.

Page 2:

A. I. c. - Defendants admitted in their answer that the adult plaintiffs named in this finding were residents and citizens of the District of Columbia at the time the answer was made. Defendants are without knowledge whether at this time any of the adult plaintiffs are still residents and citizens of the District. Plaintiffs' expression concerning relevancy is not a finding of fact but a conclusion of law.

Defendants did not admit that the named adult plaintiffs were taxpayers of the District of Columbia, and do not admit this now. Rather, plaintiffs were put to their proof on the issue and failed to offer any evidence in support of this proposed finding.

A. I. d. - Defendants admitted in their answer that Carolyn Hill Stewart was a speech correctionist in the District public school system. Defendants are without knowledge whether at this time she continues to be so employed.

Carolyn Hill Stewart was one of four adult plaintiffs who voluntarily disavowed any association with counsel for plaintiffs

in this lawsuit. [See the document ordered by the Court to be marked as Court Exhibit One on July 18, 1966 (Tr. 5).]

A. 1. e. - Defendants denied in their answer that this action qualifies as a class action with the result that plaintiffs were put to their proof. Plaintiffs failed to sustain their allegation that this is a class action as is more fully demonstrated in defendants' legal brief.

A. 1. f. - Miss Hobson was removed from the third grade class to a special class at Amidon Elementary School with the consent of her parents. (Tr. 1973.) Plaintiffs adduced no evidence that these defendants were responsible for any of the difficulties experienced by Miss Hobson in the District public schools which caused her parents to transfer her to the Glaydin School in Virginia.

B. 1. a. - The Congress of the United States governs the District of Columbia and provides it with funds to operate all District agencies including the public schools.

Page 3:

B. 2. h. - Much of this borrowing authority already has been exhausted. The available balance for future years that is not earmarked for mass transit is \$29.1 million. (Plfs. K-12.)

Page 4:

4. a. - For this information see page C-7 of the defendants' proposed findings.

4. b. - Plaintiffs have misread the testimony of Commissioner Tobriner. There are more police authorized than are presently on the force. The department is approximately 200 vacancies below full strength. (Tr. 302.)

Page 5:

C. 1. c. - This finding is incorrect. The pupil population for the District's elementary, junior high, senior high, and vocational public schools was 143,397 for the 1965-66 school year. (Plfs. P-4.)

Page 6:

2. b. - Dr. Haynes gave no particulars to substantiate her conclusion.

Dr. Haynes' testimony in this case was completely her private views. She does not speak for the Board of Education, nor did she assume to do so in this case. Formal Board action speaks for itself. There is no evidence that the Board of Education could not postpone any vote or ask for additional information on any matter if it so desired.

c. 1. g. and c. 1. i. - Plaintiffs have confused the dollar amounts, fiscal years, and the actions of the Board of Education and the Board of Commissioners. The true figures are these: The school budget recommended by the Commissioners to Congress for the school year 1966-67, fiscal 1967, sought \$114.5 million, of which \$82.5 million was for operating costs and \$32.0 million was for capital construction. (Tr. 2672.) The figure of \$75 million is the total operating budget amount approved by Congress for fiscal 1966. (Plfs. K-12; Tr. 297.) The figure of \$107 million is the total school budget approved by the Commissioners for fiscal 1966. (Plfs. K-12.) The finding expressed in c. 1. h. is correct.

Page 7:

2. a. to 2. e. - The uses made of the Model Budget by the defendants in their actual budget operations are discussed beginning at Tr. 3953.

Page 8:

d. 3. i. - There was a delay in obtaining some Title III funds because the school system considered the District of Columbia to be a "state" under the regulations and the Office of Education considered the District to be a "local district". There was no loss of funds.
(Tr. 3961-62.)

d. 3. j. - Dr. Hansen denied missing a Title II submission date at Tr. 453. At the same time he admitted missing a Title III submission date, which is discussed above. On Tr. 455-56, counsel for the plaintiffs slipped from "Title III" to "Title II" and Dr. Hansen followed the slip. At best, the discussion with Dr. Hansen is ambiguous. The definitive discussion is at Tr. 3961 wherein Dr. Carrol, who possesses particular knowledge of submission dates, indicated that Title II requests have been timely filed.

d. 3. m. - This finding is incorrect. This is the estimate of federal program funds for fiscal 1967 and not the actual funds received for fiscal 1966.

Page 9:

3. a. 1. - There are 136 elementary school buildings but a lesser number of administrative units. (Plfs. E-1.)

3. b. 2. - This finding is not correct.

The oldest senior high school, Western, which was constructed in 1898, serves a neighborhood with a median income level of \$8,000 to \$8,999. (Plfs. E-1, F-3.)

The third oldest junior high school, Macfarland, which was constructed in 1923, serves a neighborhood with an income level of \$6,000 to \$6,999. The two junior high schools serving the highest

income areas, Deal and Gordon, were constructed in 1931 and 1928 respectively. (Plfs. E-1, F-3.)

Of the 31 elementary school buildings being used for classroom purposes that were constructed before 1900, six serve neighborhoods with income levels of \$3,000 to \$3,999; fourteen serve neighborhoods with income levels of \$4,000 to \$4,999; five serve neighborhoods with income levels of \$5,000 to \$5,999; one serves a neighborhood with an income level of \$6,000 to \$6,999; three serve neighborhoods with income levels of \$7,000 to \$7,999; one serves a neighborhood with an income level of \$9,000 to \$9,999; and one serves a neighborhood with an income level of \$11,000 to \$11,999. (Plfs. E-1, F-2.)

Of the fourteen elementary schools mentioned above, three that serve neighborhoods with income levels of \$4,000 to \$4,999 have been authorized for replacement by new schools in the same neighborhood. The same thing is true of two of the five above-mentioned elementary schools that serve neighborhoods with income levels of \$5,000 to \$5,999. (Dfts. 135.)

Furthermore, the newest school buildings are located almost exclusively in the lower income neighborhoods. See pages C-19 to C-21 of the defendants' proposed findings.

3. c. 1. and 3. c. 2. - Generally speaking, these findings are correct. For a more particular discussion of capacity and enrollment of schools at all levels see page C-25 of the defendants' proposed findings.
3. c. 3. - And, of course, there are fewer predominantly white classrooms than predominantly Negro classrooms without regard to capacity.
- (Plfs. P-4.)

Page 10:

- 3.d.9. - Only a part of the Takoma Elementary School population would have fed into Rabaut under the tentative boundry lines, with the remaining population feeding into Paul Junior High School. The number of Negroes and whites that would have gone to Rabaut and Paul is not a matter of record.
- 3.d.11. - Only a single school principal is mentioned in the record.
- 3.d.12. - For a more complete discussion of the site and boundries of the new Rabaut Junior High School see pages E-6 and E-7 of the defendants' proposed findings.
- 3.e.1. - Only the Grant and Jackson elementary schools were embraced by the recommendation, which was not that they be closed but that they be used for other than classroom purposes. In fact, the school system was already doing this at the time the recommendation was made. (Tr. 3723.)
- 3.e.3. - Nearly all of the predominantly white elementary schools are also "substandard" under current criteria. See pages C-21 and C-22 of the defendants' proposed findings.
- 4.a.1. - The plaintiffs have overlooked more updated information that is a matter of record. Forty-five elementary schools have librarians. See pages C-26 and C-27 of the defendants' proposed findings.
- 4.a.3. - For the distribution of library facilities see pages C-26 and C-27 of the defendants' proposed findings.
- 4.a.4. - The school system requested a librarian for every elementary school that did not currently have a librarian but that had a library or space where a library could be established. There is no sense in requesting a librarian where one is already located or where one could not possibly be used. (Tr. 3974.)

4. b. 1. - The exact figures are a matter of record. Of approximately 136 elementary units, 90 have libraries, 26 have space available for conversion to a central library and 18 do not have such space available. See pages C-26 and C-27 of the defendants' proposed findings.

Page 11:

4. b. 2. and 4. b. 3. - Requests were made for funds to convert available space into a central library for 8 out of 26 schools wherein space was available. Requests were made for money to provide library space wherever physical space was available in all schools wherein major additions were not scheduled. The remaining schools would receive library space by virtue of the scheduled major additions.

(Tr. 3753-54.) By the close of fiscal 1973, every school will have space available for a standard library. (Tr. 3750-51.)

4. b. 4. - Exact figures are available in the record. Of the 18 elementary schools without space for libraries, 17 have predominantly Negro enrollments. All 26 elementary schools with space for library conversion have predominantly Negro populations. The terms "less affluent" and "more affluent" are so indefinite while percentages are so definite that a meaningful response is impossible.

4. c. 2. - It must also be remembered that there is a great variation in the pupil population of the several schools. (Plfs. P-4.)

4. c. 3. - This finding is not true.

At the senior high school level, Eastern High School, a school with a high predominance of Negro pupils, has the greatest number of library volumes. Eastern serves a neighborhood with an income level of \$4,000 to \$4,999. (Plfs. H-3, F-3.)

At the junior high school level, the two schools with predominantly white enrollments, Deal and Gordon, have 5,000 and 3,688 library volumes respectively. There are seven junior high schools with predominantly Negro enrollments and have more volumes than Deal and another six junior high schools with predominantly Negro enrollments that have less volumes than Deal but more volumes than Gordon. All thirteen of these schools serve neighborhoods with income levels lower than those served by Deal and Gordon. (Plfs. H-3, F-3.)

At the elementary school level, the greatest number of library volumes is at the LaSalle school, which has a predominantly Negro enrollment. Lafayette school, which has a predominantly white enrollment, has the second highest number of volumes. The next seven schools having the greatest number of volumes are all predominantly Negro in enrollment.

The LaSalle School serves a neighborhood with a median income level of \$8,000 to \$8,999. Of the other seven schools with predominantly Negro enrollments discussed above as having a greater number of volumes than any school with a predominantly white enrollment except Lafayette, six serve neighborhoods with income levels of \$5,000 to \$5,999 or less. (Plfs. H-3, F-2.)

5. - All elementary schools constructed within the last eight years serve predominantly Negro enrollments. (Plfs. P-4; Dfts. 135.)
7. a. 1. - Every school was given an opportunity by the defendants in 1964 to request the full complement of textbooks and the requests were met in full with two small exceptions. Whatever textbook shortage that existed in the District schools has been met. (Tr. 3972-73.) Occasionally a school might begin a school year with less

than the full complement of textbooks because the school has received a greater influx of pupils than was anticipated when book and supply allotments were made. Pupil mobility will sometimes create such a circumstance. Additional allotments to meet the increased needs are taken from an emergency fund. (Tr. 4097.)

7. a. 7. - This finding is erroneous in the extreme and contrary to the evidence in this record. The proposed finding is based upon testimony of Dr. Jean Grambs. Dr. Grambs was cross-examined by way of deposition which, along with the deposition of Mr. Nathaniel Dixon, is a part of the record of this case. It is evident from these depositions that Dr. Grambs could not name a series of multi-ethnic books commercially available which the District school system did not already have on its textbook list for elementary schools.

The defendants incorporate by reference here their "Objections of Defendants to Testimony of Dr. Jean D. Grambs and to Exhibits W-5 Through W-27" filed with this Court in the instant case on November 4, 1966.

Page 12:

7. b. 1 - This finding is grossly misleading. The point made at this place in the record was that the Scott Montgomery School is the only school in the District with special, experimental audio-visual equipment. Only four schools in the entire United States have such equipment. Scott Montgomery was chosen as one school to try out the equipment because Encyclopedia Britannica, Bell & Howell, the U.S. Office of Education and Ohio State University were favorably impressed with the Model School

Division. It is the only one of the four schools nationally using this equipment that is located in a disadvantaged urban setting. Mr. Dixon did not testify that his school was the only one in the District with audio-visual equipment. (Tr. 6156-59.)

- 7.c. - Such a general finding is not justified by this record. The only school under discussion at the reference was the Maury Elementary School. There are approximately 120 elementary schools with predominantly Negro enrollments. See also the latter portion of the discussion at 7.a.1. above, which is applicable to this proposed finding.

Page 14:

- 8.b.5. - This is the current practice. Until federal program money became available, the positions were designated ones. See page D-7 of the defendants' proposed findings.

- 8.b.10. - Only if the examination is announced without a designated position may appointment of principals and assistant principals be so made. (Tr. 2883.)

- 8.b.15. - This finding is incorrect. Hart, Jefferson, and Stuart junior high schools have predominantly Negro enrollments and have white principals and assistant principals. The following junior high schools with Negro enrollments have bi-racial administrative staffs: Backus, Hine, Kramer, Macfarland, Paul, Sousa and Taft. The following senior high schools with predominantly Negro enrollments have bi-racial administrative staffs: Anacostia, Ballou, Coolidge, Eastern, McKinley, Roosevelt, and Western. There are 42 elementary school buildings with predominantly Negro enrollments that are supervised by white

principals. The elementary schools do not have assistant principals. (Plfs.' M-1, P-4.)

8. b. 17. and 8. b. 18. - These findings are not substantiated by the record. See page D-16 of the defendants' proposed findings.

8. b. 19. - There is a Negro assistant principal at Western. (Plfs.' M-1.)

8. b. 21. - There are no assistant principals at the elementary school level. The 14 elementary schools with predominantly white enrollment are supervised by 10 principals, all of whom are white. Of these 10 principals, four supervise separate schools (Janney, Lafayette, Patterson and Murch), and three supervise two schools each (Eaton-Hearst, Hardy-Key, and Mann-Stoddert). All the above-mentioned schools have predominantly white enrollments. Of the three remaining principals, two of them supervise one predominantly white and one predominantly Negro enrollment, and a third supervises two predominantly white and one predominantly Negro enrollment. (Plfs.' M-1, P-4.) The record does not indicate whether and to what extent a vacancy has occurred at any of these ten positions since desegregation.

Page 15:

C. 1 and C. 2. - There is no basis for these findings in the record, for there is no evidence of record disclosing the number of Negro and white custodial employees. There are 136 Negro custodial supervisors and 58 white custodial supervisors. No custodial staff is all-white; 121 custodial staffs are all-Negro; 73 custodial staffs are bi-racial. Twelve of these 73 bi-racial custodial staffs are headed by white supervisors. (Plfs.' K-4.)

- d. 2. a. - This is the theory, but in reality the formal prerequisites for a "good" teacher are unknown. See pages D-19 and D-20 of the defendants' proposed findings.
- d. 2. b. - The plaintiffs have failed to include the qualifying statement of Dr. Carroll, the witness at the reference to the record. He made the following statement:

"The question partly is because of improved competence, but as a matter of fact where there is no research I know of this [defendants believe that Dr. Carroll actually said that "while there is no research I know on this"] -- the general opinion is after three or four years a teacher probably is not going to improve greaterly [sic] although they [sic] may improve -- from then on you are paying [the increased salary increments] totally to the service and to meet the competition. There are a number of years there will be improvement but after a number of years in the same job, this is not necessarily improvement.

"As a matter of fact, one of the real problems in the school systems are the teachers who have gone over the hill so to speak and have reached the top of their ability, and are on tenure and are with your system but are not able to teach as effectively so it is entirely possible that a group of teachers composed of the top of your salary schedule 25 or 30 years might have lower qualifications of teachers not than [sic] may be in the 5th or 6th level of the salary level." (Tr. 3796-97.)

- d. 3. e. - This finding is too general to be correct. For a detailed discussion of the distribution of tenure and non-tenure teachers within the school system, see pages D-17 to D-20 of the defendants' proposed findings.

Page 16:

4. f. - This finding is incorrect. The correct figure is 123, not 156.
4. g. - The specific number is a matter of record; it is 18.
4. h. - The specific number is a matter of record; it is 354.

- 4.j. - For a detailed discussion of the distribution of tenure and non-tenure teachers within the school system, see pages D-17 to D-20 of the defendants' proposed findings.
- 4.k. - Twenty-two elementary schools are concerned. (Plfs.' F-2.)
- 4.l. - Three elementary schools are concerned. (Plfs.' F-2.) The difference in the sample of high-income level and low-income level schools gives a distorted picture. For a particular discussion of this matter, see pages D-17 to D-19 of the defendants' proposed findings.
- 5.e. - This is the reason why there is a special academic track for the mildly mentally retarded. Dr. Justison complimented the District school system for its treatment of severely mentally retarded pupils, which treatment, in her opinion, compared very favorably with the efforts of most large cities. (Tr. 1890.)

Page 17:

- 5.h. - There is a nationwide shortage of teachers qualified in the area of special education (Tr. 1893). There is no evidence in this record that the neighboring areas of Maryland and Virginia are able to discover and employ special teachers that meet their respective licensing standard or whether they must rely on "temporary" teachers, that is those who do not meet these licensing standards.
- 5.m. - The relationship of teaching ability to formal preparation, especially in the area of special education, is uncertain. See page D-20 of the defendants' proposed findings. Dr. Justison stated that energy and dedication on the part of a teacher in special education can be very beneficial and she was very favorably

impressed with some of the classroom skills being developed within the District school system (Tr. 1902-03). That dedication and energy is illustrated by the fact that of 289 District respondents to a questionnaire in special education, 272 indicated an interest in taking more special education courses if they were formally offered (Plfs.' A-12). Recent activities of the District to offer in-service training to its teachers, whether or not in special education, are outlined on page D-8 of the defendants' proposed findings.

6.b. - The words in quotes are not the words of Dr. Hansen. The wording of the Superintendent's Circular, dated April 13, 1964, on this subject was that, "Those in charge of personnel assignments will make a maximum effort to set up bi-racial faculties in each school unit. Assignments will continue to be made solely on the basis of need and competence." (Plfs.' L-4.)

6.c. - This is an unjustified over-generalization. See pages D-11 to D-13 of the defendants' proposed findings.

7.c. - There is one additional consideration. No permanent teacher will be transferred to another staff if by that transfer the number of tenure teachers (permanent and probationary) would exceed 70 per cent of the overall staff. (Plfs.' L-4.)

Page 18:

7.k. - The transfers were not denied because of race. See page D-15 of the defendants' proposed findings.

7.n. - The transfer was not denied because of race. See page D-15 of the defendants' proposed findings.

7.s. - He has transferred or assigned assistant principals for the purpose of integrating a school's administrative staff. (Tr. 2989.)

See also page D-12 of the defendants' proposed findings.

Page 19:

- 8.a. to 8.e. - These statistics apply to the elementary schools only.
- 8.e. - This is incorrect. There were 175 white teachers (97 per cent) and 5 Negro teachers (3 per cent) at the 14 predominantly white elementary schools.
- 8.f. - This finding applies only to teachers already in the District school system. A teacher coming into the system, be he white or Negro, must accept the position offered or he will not be hired. Hence, when an incoming white teacher is offered a position in a school with a predominantly Negro enrollment and he refuses the offer, he will not be offered another position to suit his racial preference. (Tr. 76.)
- 8.h. and 8.i. - This information is for the school year 1964-65. The plaintiffs have ignored information in the record for the school year 1965-66. The figure of 65 elementary schools containing no white teachers was reduced to 62 for the school year 1965-66. The total number of elementary schools not having bi-racial staffs was not 83 but 79 during the 1964-65 school year. That figure has been reduced to 72 for the school year 1965-66. The number of elementary schools without any Negro teachers has been reduced from 14 in 1964-65 to 10 in 1965-66. See, generally, page D-11 of defendants' proposed findings.
- 9.b. - This finding is incorrect. Stable faculties are more likely to exist where there are older schools in more stable neighborhoods, whether the school serves a predominantly white or predominantly

Negro pupil population. (Tr. 3809.)

Page 20:

e. 2. e. - This finding is incorrect. There are two junior high schools with predominantly white enrollment, Deal and Gordon. (Plfs.' P-4.)

e. 2. g. - This finding is incorrect. There are 14 elementary schools with predominantly white enrollment. (Plfs.' P-4.)

3. c. and 3. d. - This finding is incorrect because it is based upon the Poverty Task Force Report which is also incorrect. A higher percentage of elementary schools with predominantly white enrollments had a larger pupil-teacher ratio than did elementary schools with predominantly Negro enrollments.

The average pupil-teacher ratio at the elementary school level for the school year 1965-66 was 30.2 pupils to one teacher. Of the fourteen elementary schools with predominantly white enrollments, seven of them (50 per cent) had ratios larger than the average ratio at that level; six of them (43 per cent) had ratios less than the average ratio; and one of them (7 per cent) had the same pupil-teacher ratio as the average ratio at the elementary school level.

Of the 123 elementary schools with predominantly Negro enrollments, 60 of them (49 per cent) had ratios larger than the average; 60 of them (49 per cent) had ratios less than the average; and 3 of them (2 per cent) had the same ratio as the average pupil-teacher ratio for the elementary school level of 30.2. (Plfs.' L-9.)

Pages 21; 22 and 23:

4. i., 4. j., 4. k., 4. v., 4. aa., 4. bb., 4. cc., 4. dd. and 4. ee. - Plaintiffs have repeated the same thing nine times and each time have over-

generalized to the point of being in error. See pages C-10 to C-17 of defendants' proposed findings.

Page 22:

4. w., 4. x., 4. y. and 4. z. - The plaintiffs have incorrectly stated the school years to which these figures apply. All this information is applicable to the school year 1963-64 and not to later school years as the plaintiffs indicate. The plaintiffs have apparently been misled by the erroneous date that appears at page 15 of Plaintiffs' Exhibit A-3, the Task Force on Antipoverty Report.

All the information in these particular proposed findings stem from Plaintiffs' Exhibit F-1. It is directly stated in the (w.) and (x.) findings, and it is the source of Plaintiffs' Exhibit V-7 (Tr. 730). Note also that the median figure of \$295 is the same figure that appears on Plaintiffs' Exhibit F-1. The data given in F-1 is for the school year 1963-64.

Page 23:

4. ff. and 4. gg. - This data is for the school year 1963-64 and not for the school year 1965-66 as the plaintiffs propose. The data is based upon Plaintiffs' Exhibits F-2 and V-8, and V-8 is based upon F-2 (Tr. 724). Plaintiffs' Exhibit F-2 gives data for the school year 1963-64.

5. b. - This finding is incorrect. See page E-2 of defendants' proposed findings.

5. c. - There is a predominance of Negro families in this optional zone.- There is no evidence of record that the southwest redevelopment area is predominantly white. The record indicates that the purpose of the optional zone was to give all parents regardless of

race an opportunity to choose between sending their children to an integrated school or to one that had a high Negro predominance.

See page E-3 of defendants' proposed findings.

- 5.d. - The purpose for this optional zone is stated in 5.c. above.
- 5.e. - Wilson High School was not associated with this optional zone until 1965 when the zone had become predominantly Negro. See page E-2 of defendants' proposed findings.

Page 24:

- 5.h. - The record does not support this finding. The reason for the described change is set out at pages E-1 and E-2 of defendants' proposed findings.

Page 25:

- 5.v. - See page E-4 of defendants' proposed findings.
- 6.a. - This proposed finding is misleading. This is a hypothetical matter and one should not be lead to believe by this finding that books written in an ethnic idiom rather than in standard English are available.
- 6.b. - The testimony of Dr. Dailey was "that per pupil expenditure has a very slight positive association with reading grade level on this chart for these data." (Tr. 6308.) He also stated that any relationship between reading grade level and per pupil expenditure "becomes zero as you hold income level (of the neighborhood served) constant." (Tr. 6306.)
- 6.d. - The veracity of this information or the size of the sample is very questionable. When shown the chart from which this finding was drawn, Dr. Hansen said:

"I don't recall the origin of this chart, and I have not been able to check the accuracy of it, as I was disturbed by the fact that it seems unreasonable that 67⁰/o of our youngsters are reading at grade level. This is higher, you see, than the average." (Tr. 243.)

He also said:

"* * * I've not had a chance to confirm this particular set of figures. This may be right, but I don't believe they came from our office." (Tr. 243-44.)

7. a. iii. - This finding is incorrect. The majority of dropouts have been located in the general tracks. See Plaintiffs' Exhibit C-21 for particulars. The special academic and basic tracks are one and the same.

7. a. xii. - This finding gives a misleading picture of the dropout situation in the District schools. See, generally, pages H-1 to H-4 of defendants' proposed findings.

The figure of 18, 099 dropouts includes dropouts from the elementary, junior high, senior high, and vocational high school levels. The figure of 15, 970 high school graduates does not include graduates from the elementary and junior high school levels. It is unfair and misleading to compare dropouts from all levels with graduates from the senior high and vocational high school levels only. Graduates from the elementary and junior high school levels should be added to give a total picture. Approximately 10, 000 pupils a year are graduated from the junior high school level, and approximately 11, 000 pupils a year are graduated from the elementary school level. (Plfs.' P-4.) If these "graduates" were taken into account, it would increase the total number of school "graduates" to approximately 120, 000 pupils as compared with

18,099 dropouts.

It must be remembered that the underage dropouts at the elementary and junior high school levels are generally returned to school. (See page H-1 of defendants' proposed findings.) Consequently, a substantial portion of the 18,099 dropouts are not permanent dropouts but merely truants.

It is probable that some of the 18,099 pupils noted as "dropouts" are only truants who dropout more than once. Consequently, the figure 18,099 probably represents less than 18,099 pupils, but 18,099 incidents of dropout by a lesser number of pupils.

Pages 26 and 27:

b. i. to b. xii. - The experience at the Lorton Youth Center demonstrates, within the limits of the sample, the basic validity of the District school system's decision to concentrate upon a program of compensatory education for its pupils. See pages B-7 to B-9 of defendants' proposed findings. The Lorton Youth Center is a prime example of compensatory education (Tr. 1609-15) applied to an almost totally Negro pupil population (95 per cent) (Tr. 1588) from disadvantaged backgrounds. (Tr. 1590-94; 1605-06.)

Page 26:

b. iv. - There is no need for a track system in Lorton for the pupils there have had very similar experiences and are relatively homogeneous. The great bulk of them are dropouts from public schools, have a record of truancy and poor school conduct, have attended more than one school (mobility), have been retained one or more grades, and come from broken homes. (Tr. 1590-94; 1605-06.)

b. viii. - The importance or unimportance of this fact is discussed at pages G-6 and G-7 of defendants' proposed findings. There is no evidence that the Revised Beta Examination, a non-verbal examination, is a measure of complex reasoning skills.

Page 27:

b. x. and b. xi. - The sampling upon which these tests were made totaled 69 pupils (Tr. 1489). Dr. Lennon advised skepticism in analyzing the results of such a small sampling. (Tr. 3562-64.)

Page 28:

9. c. 3. - Dr. Hansen denied this proposed finding at Tr. 482. Generally, see Tr. 478-88 for a discussion of the merits of the Model School Division.

10. b. - The word "required" is incorrect. The basis for this proposed finding is Plaintiffs' Exhibit C-14 which states in pertinent part:

"The programs in our vocational high schools are designed for the 90 plus I. Q. student, however, mildly retarded students who have completed the 9th grade have been enrolled in some cases. These latter students enter the same shop classes with the more able students, but may not be able to progress further than a single or semi-skilled phase of the shop subject. Our vocational programs are limited to the senior high school level (10-12 grades) and do not embrace programs specifically designed for the mentally retarded."

10. c. 1. - Only three vocational schools are operating in excess of capacity.

A fourth is 98.3 per cent of capacity and a fifth is 84.3 per cent of capacity. (Plfs. L-11.)

10. c. 2. - This finding cannot be reconciled with the under capacity status of two vocational schools. See 10. c. 1. above.

Page 29:

a. 3. - Where there is a potential for integration, this becomes a prime

factor in the construction program. See pages C-22 to C-24 of the defendants' proposed findings.

b. 1. a. - The exact figures were 44,897 (43 per cent) white students and 58,936 (57 per cent) Negroes. (Dfts. 124.)

b. 1. b. - And immediately following desegregation, 73 per cent of the public school pupils were attending bi-racial schools. (Tr. 374.)

b. 1. c. - Dr. Hansen expressed the judgment that the number of complaints was "amazingly small". (Tr. 376.)

b. 1. h. - Dr. Hansen did not develop the track system by himself. In describing the genesis of the track system, Dr. Hansen said that:

"We, and when I say we, I mean the principals and others working on it, during the course of the year 1955 * * * and we spent the year hammering out policies and aspects of the program. * * *"
(Tr. 376)

Page 30:

b. 1. r. - This finding is based principally upon the testimony of Dr.

Haynes. The portion of the finding discussing the committee process in forming the track system is correct. The remainder is incorrect. Dr. Hansen was only the Assistant Superintendent in charge of secondary schools in 1956 when the track system was recommended to the Board of Education. It was not Dr. Hansen but the Superintendent of Schools in 1956 who submitted the track proposal to the Board and, having submitted it, the Superintendent was obviously in agreement with the proposal. (Tr. 377.) The Court has recognized that Dr. Haynes is not familiar with the particulars of the Board's initial actions on the track system because she was not a member of the Board in 1956. (Tr. 958, 980.)

b. 1. s. - Dr. Hansen did not become superintendent of schools until 1958. Hence, the extension of the track system to the 11th grade in 1957 was not a result of Dr. Hansen's recommendation to the Board but a result of the recommendation of the superintendent of schools. See b. 1. r. above. It is not a matter of record whether or not Dr. Hansen was superintendent of schools during that time in 1958 when the track system was extended to the 12th grade by the Board of Education.

b. 1. u. - This finding is without foundation in the record. There is no evidence that there was opposition to the track system by other school systems. It is merely the wording of a question by plaintiffs' counsel at Tr. 975.

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2. a. vii. and 2. a. viii. - See pages F-15 to F-21 of defendants' proposed findings.

2. a. x. - While there is some correspondence between racial predominance and the proportion of a student body in a given curriculum, there are a number of exceptions to the pattern. A far greater correspondence exists between income level served by the school and the proportion of its student body in each track. See pages F-15 to F-21 of defendants' proposed findings.

The record upon which this finding is based relates to the senior and junior high schools but not to the elementary schools.

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b. iii. - This finding is incorrect. The test involved is the Metropolitan Readiness Test, which is a nonverbal test (Plfs. ' B-10).

"Metropolitan Reading and Writing Test" is a phrase used by

counsel for the plaintiffs, but there is no such test in existence.

It bears repeating that this test is only one of the criteria.

b. iv. - This opinion is incorrect and without substantial basis. The opinion was expressed by Dr. Blake. His basis for the opinion was his supervision of a master's thesis that dealt with one elementary school, Plummer, out of approximately 136 elementary schools. (Tr. 1810-11.)

c. ii. - There is no automatic "cut off", for as stated in plaintiffs' preceding proposed finding, c. i. above, "A child's achievement on an intelligence test is one of the facts taken into consideration for placement in a special academic track." (Emphasis added.) The figure of 75 is only a generally used guideline. See page F-9 of defendants' proposed findings.

See also Tr. 1601 where one of the plaintiffs' witnesses, Dr. Simons, a counselor in Morgan Elementary School, sets out some of the criteria in addition to an I. Q. result upon which placement in the special academic curriculum is grounded.

c. iv. - This is an exception rather than the rule; and there is no basis in this record for asserting it as more than an exception.

The special academic track is designed to serve the mildly mentally retarded pupils, who may also be referred to as the educable mentally retarded. (Tr. 400-01, 1887.) As pointed out by Dr. Hansen, however, "It is entirely possible a youngster who is mentally retarded * * * may at the same time be emotionally upset, may be difficult, may be a problem child. Disabilities as you well know are often multiple." (Tr. 399.) Dr. Hansen admitted that it might be possible that emotionally disturbed pupils as well as slow learners

might be found in the special academic class with mentally retarded pupils. He said that "We prefer not to have that happen if it can be avoided. * * * Where the line is drawn between the need of the child for this type of social adjustment programming where he is capable of functioning on basic curriculum is a judgment has to be made by the principal, counselor, and psychologist, not by me." (Tr. 400.)

To support their finding, the plaintiffs make reference at Tr. 4037-38 and 6054-55 to two instances at the Maury school. These references are inapplicable because the class at the Maury school was not a special academic class but an innovation outside of the special academic curriculum. (Tr. 4034-37.)

At Tr. 6206, referred to by the plaintiffs, Mr. Dixon, the principal of the Scott Montgomery school, acknowledged that there were two children who had been placed in the special academic class at his school. They were in this class for two months when they were reevaluated at the request of the teacher and found to be emotionally disturbed rather than mentally retarded. They were removed from the special academic class. (Tr. 6206.)

The final reference, Tr. 935, is a statement by Dr. Justison that there appeared to be a severely retarded pupil in the special academic curriculum. This statement was made solely on the basis of an I.Q. figure appearing on a school profile that is Plaintiffs' Exhibit A-13. An I.Q. figure by itself is not used as a placement tool in the public school system. There is no "cut-off". The total child is considered by a professional. Dr. Justison did not have sufficient information to review this placement.

Generally, see pages F-3 and F-7 to F-9 of defendants' proposed findings.

c.v. - Generally, the books have the same appearance and concepts as books used in the other tracks but with more simple vocabulary and sentence structure. (Tr. 6107-14.)

c.vi. - This is true if they have not progressed satisfactorily at the elementary school level to be upgraded to the general track in junior high school. See page F-7 of defendants' proposed findings.

c.viii. and c.ix. - The figure of 441 is incorrect. Beginning in September, 1965, and continuing thereafter, the rule has been established that no child shall be placed in the special academic curriculum without a recommendation for such placement after evaluation by the Department of Pupil Personnel Services.

Reevaluation (which may or may not include individual testing depending upon the judgment of the professional) of some 1,273 D.C. public school pupils was accomplished beginning in September, 1965, by the Department of Pupil Personnel Services. Of the 1,273 pupils, an unknown number of them were at that time in the special academic curriculum and an unknown number were still in the general track but were being considered for placement in the special academic curriculum. As a result of this evaluation of the 1,273 pupils by school professional personnel, an unknown number of pupils remained in the special academic curriculum, and an unknown number were transferred to the special academic curriculum from the general curriculum. (Tr. 391-96.)

c.xii. - This is an inexact over-simplification. Dr. Hansen said that it was a "fair estimate" that 50 per cent of the teachers of the special

academic classes were temporary (Tr. 539f). It should be remembered that throughout the entire school system the proportion of temporary, or non-tenure teachers is 43 per cent. (Plfs.' L-2.)

c.xiii. - This finding results from an examination of Plaintiffs' Exhibit A-13, a profile of special academic classes at Randall Junior High School. There is no evidence whatsoever that the situation described in this finding can be generalized as plaintiffs have done beyond this particular school to the nearly 160 other schools in the public school system.

Furthermore, going to the substance of the finding, Dr. Justison, who only adopted the unartful wording of plaintiffs' counsel in a leading question, could only say that some children in the profile had not been given an individual, clinically administered test in five or six years. The profile only lists dates of individual tests, not group tests, given to the children and the results thereof. The test information is given under the columns marked "Record of Clinicals", meaning tests given outside of the classroom. The tests listed, such as the WISC and Stanford-Binet tests, are individual tests. (Tr. 1116.) Individual testing of pupils in special academic classes is not required. Evaluation of a pupil's overall record, which may include individual testing, is required.

There is no place for group testing results on this profile, but there is no reason to believe that group testing has not been carried out on these pupils in accordance with the testing schedule in Plaintiffs' Exhibit B-10.

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c. ii., d. i., e. i., f. i., and f. ii. - The I. Q. figure is not a fixed "cut-off" figure that automatically assigns a pupil to one or another curriculum. Rather, an I. Q. figure is merely an indicator and but one of many factors. See page F-9 of defendants' proposed findings. That the use of an I. Q. figure is a generally accepted measure in discussing pupil ability is demonstrated by the fact that the President's Commission on Mental Retardation and the American Psychological Association employ an I. Q. figure to define the ranges of ability. (Tr. 1881-87.)

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f. iv. and f. v. - These figures apply only to the elementary level. For a detailed discussion of this subject, see pages F-15 to F-21 of defendants' proposed findings.

f. vi. - The response of the defendants to plaintiffs' proposed finding 2. a. x., page 31, is applicable here.

g. ii. - For a particular discussion of the activities of senior high school pupils graduating from the various tracks in June, 1965, see Plaintiffs' Exhibit T-2.

g. iii. - This is true because pupils in the honors curriculum take more Carnegie units and have fewer elective courses than pupils in the regular curriculum, thereby assuring themselves that they will more likely have the prerequisite courses for college admission. See plaintiffs' proposed findings e. ii. and f. iii., page 33.

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- g. iv. - There is no causal relationship between entrance to four-year colleges and racially mixed education. It is almost completely a matter of economics. The senior high schools with predominantly white or racially balanced enrollments serve higher income areas than do the senior high schools with a high predominance of Negro pupils. (Plfs. P-4, F-3.)
- g. viii. - This finding must be clarified. 41.4 per cent of the senior high school pupil population were either in the college preparatory curriculum or the honors curriculum. The remaining pupils were either in the general or special academic curriculum.
3. a. iv. - The test industry has techniques to measure the likely amount of such error. To take account of this likely error, a test result may be expressed by a percental band which is a range of likely scores. (Tr. 3182-83.)
3. a. vii. - The plaintiffs have failed to include a qualification that Dr. Lennon added to this response. He said that "These cases tend to be relatively few in number and constitute exceptions to the general rule" that people who do not perform well on verbal tests will likewise not perform well on nonverbal tests. (Tr. 3230-31.) See also page G-6 of the defendants' proposed findings.
3. a. viii. - Only group tests were being discussed at this point in the record, and the finding applies only to group tests, not to individual tests. The plaintiffs have failed to include in this list of nonverbal group tests the Metropolitan Readiness Test. (Tr. 3233-34.)

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3. a. ix. - The request may arise from the teacher, counselor, or principal. All requests made to the Department of Pupil Personnel are routed through the principal. (Tr. 309.)
3. a. xi. - Out of an abundance of caution, it should be observed that this proposed finding is a generally observed correspondence. This finding should not be taken to mean that no child of low income parents is able to score higher than any child of higher income parents.
3. a. xv. - The question was put as a hypothetical one, and this finding should not be taken to indicate that such tests are extant and that this has in fact happened.
3. a. xvii. - In the phrase "middle income or white children", the word "or" should be removed. The two groups discussed in the testimony referred to are low income Negroes and middle income whites. The presence of the word "or" gives the mistaken impression that whites, whether or not middle class, perform better than low income Negroes. To the contrary, defendants believe that this record supports the finding that at a given income level, generally, pupils will perform equally well on a standardized test regardless of race. See pages G-10 to G-13 and G-16 to G-18 of defendants' proposed findings.
3. a. xviii. - The plaintiffs have mistated this finding, the wording of which appears in a document read to Dr. Lennon and upon which he was asked to comment. The plaintiffs have omitted the word "may" from between the words "children" and "have" thereby making the proposed finding inevitable rather than possible. In commenting upon this sentence Dr. Lennon announced his reservation that the occasions of

such meaningful differences are probably infrequent. He regretted the lack of documentation on this matter and expressed a belief that such meaningful differences occur less often than a reader of the corrected statement might believe.

3. a. xix. - Plaintiffs have overstated this finding. The pre-school Negro children involved were only a sampling of an unstated number of pre-school children in the Cardoza area. (Tr. 1323.)

3. a. xx. and 3. a. xxi. - This information was given to Dr. Lennon by plaintiffs' counsel on cross-examination in a hypothetical question. Dr. Lennon pointed out at Tr. 3408 that the fact of a 90 per cent Negro population would not affect his answer since ethnicity has no effect on the test scores; socio-economic status and test achievement have a high degree of correspondence. Dr. Lennon went on to say that if the nation-wide family median income were greater than the \$6,000 figure given in the hypothetical question, then the test results obtained as a group probably would be below the national average. However, he noted that \$6,000 to \$6,200 is currently the national family median income, and because of that fact, he would answer that the hypothetical group tested would probably obtain as a group no significant variation from the national norm. (Tr. 3408-09.)

The current median family income for Negroes in the District of Columbia is not available. The 1960 figure was \$4,800, and the 1950 figure was \$2,190. If this rise has continued unabated to 1966, at the rate of \$200 a year as indicated by the rise between 1950 and 1960, the median family income level for District Negroes in 1966 would be \$6,000. (Plfs. V-9.)

3. a. xxii. - Greater probability of better test performance by children as a classroom group in a bi-racial setting was being discussed rather than better test performance of any one Negro or white pupil. As such, this finding is meaningless since it fails to take into account the income levels of the whites and Negroes. It is the defendants' position that, generally, if middle income whites are introduced into a class that was formerly made up of Negroes below the income level of the whites, there will be a resulting rise in the norm of classroom scores on standardized tests. This is likely to occur because of the high correspondence between income levels and group test results. See pages G-10 to G-13 and G-16 to G-18 of the defendants' proposed findings. See also Tr. 6264-65.

3. a. xxiii. - An achievement test may also be used as an aptitude test to predict future achievement in a particular school program. (Tr. 3160-61.) See also page G-3 of the defendants' proposed findings.

3. a. xxiv. - It is improper to generalize on this matter. The term "valid" is a word of art in the testing profession that includes content validity, predictive validity and construct validity. Test validity, as a term of art, will depend upon the type of test and the purpose to which the test result will be put. No generalization is possible. (Tr. 3348-54.) See also pages G-8 and G-9 of the defendants' proposed findings.

3. a. xxv. - This is a grossly incorrect and conclusionary finding based upon the testimony of Dr. Haynes and Dr. Cline. The reliance on such testimony without reference to expert testimony in the case is dangerous as is pointed out by defendants' responses to numerous other findings based upon their testimony alone.

For the legitimate worth of testing in the District public school system see that section of the defendants' proposed findings beginning at page G-1 entitled "Testing, Its History, Value and Employment Nationwide and in the District of Columbia Public School System."

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3. a. xxvi. and 3. a. xxvii. - These proposed findings are based upon the testimony of Dr. Cline who has at this stage exceeded the area of his expertise, testing. (Tr. 1325.) Furthermore, these proposed findings have no basis in this record. Dr. Cline acknowledged that these matters are "complicated social and psychological events and the resultant behavior of a child in school is a result of the interaction of many of these factor." But "no one force, I think, can be isolated." (Tr. 1735 - two pages in the transcript bear this number.) Dr. Cline was unwilling to make a definitive statement on this matter. (Tr. 1737.) The entire matter, he said, was a "complicated question". (Tr. 1737.)

Dr. Cline admitted that he had not "had an opportunity to examine that kind of a notion on my data". (Tr. 1788.) He stated that he was talking on the basis of some surveys and reports, of which "there are a number, not as many as we would like" and indicated that the Office of Education Report (Plfs. A-4 and A-18) "fills in those holes" left by these surveys and reports he relied upon. The Office of Education Report was excluded from evidence. The reports and surveys relied upon by Dr. Cline were not named. (Tr. 1788.)

3. a. xxviii. - Dr. Lennon was reluctant to speak with any weight on this point. He said that "There have been one or two studies * * * that seemed to point to a higher incidence of test anxiety among disadvantaged groups. I have not been particularly concerned with any hard study in this area, so I do not represent any special expertness. I have a general feeling that these researches are at least open to the other interpretations." Dr. Lennon also indicated that test anxiety among examinees is not an important source of variation in test performance. (Tr. 3279-80.)

3. a. xxix. - This finding has no basis in the record. It is wholly speculative. The record contains no concrete demonstration of the relationship between teacher expectation and academic achievement. The reference in the record is to testimony by Dr. Cline whose testimony is not based upon any of his own investigations and conclusions but on his readings. (Tr. 1303, 1410, 1789.) Those readings remain unidentified. He indicated that his reading consisted of reports relating to experiments not conducted in the District of Columbia and concerning teachers that were not selected in any manner calculated to be representative of other teachers in the United States. (Tr. 1410-11.)

Teachers are individuals and professionals. Their approaches to education probably differ, and any generalization from this record about teacher expectation is at best only speculation. (Tr. 1409.)

There is no evidence in this case of how and why a pupil's academic achievement is affected by a teacher's expectation. To the contrary, a teacher's expectation is a valuable thing, as explained by Dr. Lennon: "Teachers do take account of I. Q. 's in judging what goals are reasonably attainable by individual pupils and the rate of progress they may look for * * *." (Tr. 3569.)

3. b. - This finding is a misstatement of the testimony of Dr. Blake.

Before Dr. Blake answered the question upon which this finding is based he asked counsel for the plaintiffs to define "educational skills". Counsel replied, "Well, say the intellectual ability of the child." (Tr. 1828.) Hence, Dr. Blake testified that the individually administered I. Q. test cannot measure the intellectual ability of a child. This is in keeping with the testimony of Dr. Dailey who stated that no test that he knew of could measure any innate intellectual skills but that tests could only measure achievement in broad skills and predict possible future achievement in a general liberal arts orientated curriculum. (Tr. 6279, 6294.)

Dr. Blake went on to say that individual I. Q. tests could be used as one factor in classifying children according to ability. (Tr. 1828.) This, of course, is exactly the purpose to which the defendants put these tests.

3. c. ii. - It is generally true that low income children, as a group, Negro or white, do not perform as well as middle income children, Negro or white, on standardized tests. It is not true, however, that middle income whites form the standardization population. The entire socio-economic spectrum is sampled and approximately 5-10 per cent of the group sampled is Negro. See pages G-10 to G-13 of the defendants' proposed findings.

3. c. ix. and c. x. - These findings have no basis in this record beyond the unsubstantiated opinions of Dr. Cline. See the objections of defendants' counsel at Tr. 1377-78.

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3. c. xiii. - This is a misstatement of Dr. Cline's testimony. His response concerned itself with Negro "ghetto schools". He did not mean to indicate that race affected test scores but that some of the factors attributed to Negro "ghetto schools" affect test scores. His discussion of these debilitating factors is without any substantial basis in the record, is vague and ill defined.

3. c. xvii. - Ability to reason is one of the intellectual processes that is measured by aptitude tests. (Tr. 3174.)

3. c. xxi. - This finding is incorrect. The tests given are the School and College Ability Tests (SCAT) and the Sequential Test of Educational Progress (STEP).

3. c. xxiv. - Plaintiffs have misnamed the second test. It should be the Metropolitan Reading and Arithmetic Tests, Elementary Form A. (Plfs. B-10.)

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3. c. xxxi. and 3. c. xxxii. - There are a number of operative factors outside of the school setting including poverty, mobility, lack of reading materials and limited verbalization in the home that contribute to a disparity between test results of low income Negroes and middle income whites in the District of Columbia. See Tr. 1729 and pages B-4 and B-5 of the defendants' proposed findings.

3. c. xxxiii. - In elaborating upon this theory, Dr. Simons said that "Just in response to his (plaintiffs' counsel) question, what did I mean, and this is just logical, that a child who cannot read when given a test which requires reading cannot score high on that test." (Tr. 1507.)

It is important to know whether or not a child can read standard English and to what degree, for the school programs are based upon the usage of standard English as are the social and economic facts of American life. See pages G-14 to G-16 and G-23 of defendants' proposed findings. See also Tr. 6361.

Dr. Dailey believes the Otis test does a good job "of sampling the skills of minority children that they have to develop if they are going to emerge from poverty and be competitive in our society." (Tr. 6280.)

3. c. xxxvii. - This finding is incorrect. Some of the group tests are nonverbal tests. See plaintiffs' proposed finding 3. a. viii, page 34, and the defendants' comment thereon.

3. c. xxxviii. - See the defendants' response to plaintiffs' proposed finding 3. c. xxix., page 36.

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d. i. bb. - As discussed above in response to plaintiffs' proposed finding 3. a. xxiv., page 35, the concept of the validity of a test is one of professional art. This proposed finding is based upon the testimony of Dr. Haynes who did not testify with any expertise in the field of testing.

d. i. dd. and d. i. ee. - It is true that the per cent of Negro pupils in the District public school system is greater than the per cent of Negroes in the standardization sampling of any standardized test. Race, per se, however, is not considered in the sampling, because when the full socio-economic spectrum is sampled for these tests, race or ethnicity are not significant. See pages G-10 to G-13 of defendants' proposed findings.

d. i. gg. - Scores may be expressed in terms of grade level achieved or percentiles, among others.

d. i. nn. - Dr. Lennon agreed with this observation so long as "predominantly" was defined as more than 50 per cent. (Tr. 3390.)

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d. i. pp. - But race is not a significant atypical characteristic. See pages G-10 to G-13 of the defendants' proposed findings.

d. ii. cc. - This is a gross opinion expressed by Dr. Blake without particulars, without specifying what uses are dangerous and why. See pages G-3 and G-13 to G-16 of the defendants' proposed findings.

d. ii. ee. - This finding is based upon the testimony of Dr. Haynes who possesses no expertise in the field of testing. "Validity" is a term of art in the testing profession. The finding is incorrect for tests are not standardized on middle-class white populations. See pages G-10 to G-13 of the defendants' proposed findings.

d. ii. ff. and d. ii. gg. - It does not matter whether or not there is racial equivalence. See pages G-10 to G-13 of defendants' proposed findings.

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d. ii. nn. - The plaintiffs' have failed to mention that the District of Columbia is developing local norms for group tests but not with the assistance of Harcourt, Brace & World, Inc. See page G-28 of defendants' proposed findings.

5. a. - The track system is not rigid. See pages F-9 to F-11 of the defendants' proposed findings.

5. b. - The word "advice" ought to be substituted for the word "opposition" in this finding. See generally Tr. 322-25.

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5. c. - There is no basis in this record for the use of the word "extremely" in this finding. It is a word of conclusion not used by a witness. Furthermore, this conclusion is incorrect. See pages F-9 to F-11 of the defendants' proposed findings.
5. e. - This was a conclusion expressed by Dr. Haynes who admitted on cross-examination that she was speaking in generalities and was not familiar with the figures on cross-tracking. (Tr. 1194-95.)
5. f. - This finding is incorrect and conclusionary. See pages F-9 to F-11 of defendants' proposed findings.
5. g. - The figure of 119 is the number of elementary school pupils who have been moved out of the special academic track while still in the elementary grades during the 1962-63 school year.
5. h. - This is merely a restatement of plaintiffs' proposed finding 5. g. above. Counsel for plaintiffs used the figure "100" for the exact figure of "119". Dr. Hansen corrected counsel to "119" at Tr. 333.
5. i. - This is an approximation based on "119" not "100". There is no information for a school year on the number of sixth grade general pupils who are programmed into the special academic curriculum the following September when they enter junior high school. Counsel for plaintiffs in his questioning has wrongfully assumed that the "119" figure applies here. In fact, it applies as described above in 5. g. to children within the elementary schools and not to children going from the elementary level to the junior high level. See generally pages F-10 and F-11 of defendants' proposed findings.
5. k. - This finding is incorrect. Of the approximate 1,000 pupils, some have been upgraded and some have been downgraded in the track system. See Tr. 335.

5. l. - These 351 pupils were moved to the general or regular tracks, not just to the general track.
5. m. - The flexibility of the track system at the senior high school level has increased in recent years. The figure of 1721 senior high school pupils moving from one track to another is over two school year periods, 1961-62 and 1962-63. Over a single school year period, 1963-64, 1356 senior high school pupils moved from one track to another. (Pls. B-1.)

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6. a. to 6. l. - All of these proposed findings are based upon the testimony of Dr. Haynes, President of the Board of Education. While she was accepted as an expert on the operation of the track system, it is very apparent from her cross-examination that she was not at all familiar with the operation of the track system and that the source of her objection was philosophical rather than grounded in the facts of its operation.

Dr. Haynes stated at Tr. 963 that "I have not had personal contact with the track system in the school system."

At Tr. 1172, Dr. Haynes answered that it was correct that she "disagree(d) with the track system because you believe in the heterogeneous approach?"

The position of the defendants and its basis is summed up at Tr. 1268-69 as follows:

" * * * the defendants have a motion that the last witness who testified [Dr. Haynes] and who was offered as an expert, her testimony with regard to any expert opinion be stricken on the grounds that after a searching examination by Mr. Redmon and reiteration of the facts today, it becomes apparent that the witness is not an expert in the track system.

"Further, Your Honor, we would move to strike not only her character as an expert witness but her entire testimony for this reason, that lacking expert status her entire testimony has been opinion and conclusions and has been in the most vague and general terms.

"Your Honor, in support of our position, I would like to invite the Court's attention to page 1060 where I am quoting from the top of the page, and I would like to read as follows:

" 'Q So that if a principal called you up and said, these children don't have the books to use, wouldn't you pick up the phone to Dr. Hansen or write him a letter and tell him that?

" 'A May I say that my real concern, my concern really that is relative to the basic track, has been not how it is operated, and that is the line of your questioning, but it definitely is the philosophy underlying it and, therefore, I have much more to offer in that direction than in terms of how it is working in a particular class. I am sorry but that is why I am so inadequate.

" 'Q Dr. Haynes, for the record, are you saying that you don't know how the track system operates?

" 'A I am not saying I don't know how the track system operates but I am not an authority on how the track system operates. I don't have the details in every case.'

"I think, Your Honor, in light of her testimony, in light of the fact that the so-called expert opinions that she held are, frankly, not supported by statistical or other factual information; and in view of this admission on page 1060 of the proceedings, that she is not an authority on how the track system operates, I think the defendants are entitled to their motion to strike her testimony and her expert character as a witness."

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7. a. - This finding is incorrect. Dr. Cline, upon whose testimony this proposed finding is based, was only newly acquainted with the document. (Tr. 1430-31.) Furthermore, the response took Dr. Cline outside of his area of expertise, the field of testing. (Tr. 1325.) See also pages F-1 and F-2 of defendants' proposed findings.

c. 1. and c. 2. - Specific proposals were made to the Board of Education and the Superintendent. The Superintendent advised against accepting the recommendations, and they were rejected by the Board. The Superintendent did agree, however, with the general goal of the proposals. He states at page 30 of the summary of his response (Plfs. A-36) dated September 1, 1964, that " * * * On the basic and persistent goal of the report, integrative education to the fullest extent possible, the Superintendent, and it is certain, the Board of Education are in complete agreement with the Washington Urban League."

c. 5. - Dr. Hansen has not correctly stated the funding plans for the WISE program. The current plan of financing is set out at page C-5 of the defendants' proposed findings and Plaintiffs' Exhibit N-11.

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d. 5. - This is an incorrect conclusion and has no basis in this record. Plaintiffs' Exhibit A-33 lists in detail the recommendations of the Strayer Report and itemizes defendants' action on each recommendations. Defendants have proved that the bulk of the recommendations was implemented at one time or another during Dr. Hansen's tenure as Superintendent.

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D. 1. 2. - There is no evidence whether or not this attempt succeeds and to what extent. There is no breakdown of operating costs from school to school within the system in this record, nor is there any evidence that the Alexandria school system does keep such a breakdown. It is generally not the fashion of school systems to do so. See page C-11 of defendants' proposed findings.

- D. 1. b. - Alexandria operates 16 elementary schools compared with the District's 136 elementary schools.
- D. 1. c. - This is also true of the District's secondary schools. See pages C-26 and C-27 of defendants' proposed findings.
- D. 2. a. - Arlington County does not keep a per pupil expenditure account by school. (Tr. 656.)
- D. 2. e. - There is some variation, depending upon the size of the school. (Tr. 664.)
- D. 2. f. - Arlington County does not keep a per pupil expenditure account by school. (Tr. 656.)

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- D. 3. e. - No breakdown exists between schools at any level to substantiate this finding. The Superintendent of the Fairfax County schools admitted that the standard varies with the size of the school. (Tr. 680.)
- D. 3. f. - The Superintendent said that this was true "because Fairfax County is practically new * * * ". (Tr. 683.)
- D. 4. a. - There is no substantial basis for this finding because Montgomery County does not keep a per pupil expenditure breakdown from school to school within the system. The Superintendent of the Montgomery County school system stated that teachers, salaries, the size of enrollment and the age of the school building will cause variances in the per pupil expenditure figure at any single school. (Tr. 689-90.) This is also the contention of the defendants. See pages C-10 to C-15 of defendants' proposed findings.
- D. 4. b. - A breakdown of the pupil-teacher ratio within a single school is not kept by Montgomery County. Older schools would yield a smaller pupil-teacher ratio than the newer schools. (Tr. 690.)

D. 4. d. - This finding is incorrect. There are 149 school buildings and 141 libraries. The size of these libraries differs because there is a range of school sizes within Montgomery County. (Tr. 695.)

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D. 5. g. - The proportion of D. C. high school graduates for that year attending college was 53.6 per cent. (Plfs. T-2.)

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E. 1. b. - It is the position of defendants that Dr. Coles empirical psychological findings may not be generalized to apply to the District of Columbia, since the District and its public school system are unique in the United States and the method of inquiry he employs is wholly inductive.

Dr. Robert Coles has made longitudinal studies of four Negro pupils in New Orleans and ten Negro pupils in Atlanta under situations of social stress created when these pupils were transferred to previously all-white public schools as a part of token integration in public schools of the South. He has also studied over a period of two years, thirty Negro pupils from the Roxbury area of Boston who have been bussed at private expense to a predominantly white public school in Boston. As an incident to these studies, Dr. Coles has observed some Negro pupils who have remained in segregated schools, some white pupils attending the schools receiving the Negro pupils, and some teachers in charge of these newly desegregated classes. He has also made a "several week" study of an undisclosed number of Negro children in Cleveland. On the basis of these particular studies, Dr. Coles would generalize his psychological findings to all

parts of the United States, North and South, East and West, including the District of Columbia. Dr. Coles had no acquaintance with the D. C. schools. (Plfs. A-24, page 43.)

Dr. Coles studied particular Negro children in 1961 and 1962 during token integration of some New Orleans and Atlanta schools. In the District of Columbia, over 70 per cent of the District's public schools had bi-racial student bodies in 1954 immediately following the desegregation decisions by the Supreme Court. (Tr. 374.)

Dr. Coles said in his deposition that Boston has a public school population that is 15-20 per cent Negro and that Cleveland has a school population that is approximately 50 per cent Negro. The District has a pupil population that is over 90 per cent Negro, a teaching staff that is over 75 per cent Negro and a total population that is over 50 per cent Negro. See pages B-1, B-2 and D-2 to D-5 of defendants' proposed findings. The District Negro families have an annual median income that is probably comparable to the median family income of all races throughout the United States. See defendants' response to plaintiffs' proposed findings 3. a. xx. and 3. a. xxi. , page 35, and page G-26 of defendants' proposed findings. A representative sampling of pupils in District schools that are predominantly Negro in enrollment demonstrated that in tests of reading comprehension they score twice as well as schools with 30 per cent or more Negro pupil population throughout the states of Maryland, Delaware, New York, New Jersey and Pennsylvania. See page G-26 of the defendants' proposed findings.

The District of Columbia is a unique city, with a unique school system and a unique population. Without an empirical investigation of

District Negro school children by Dr. Coles, it cannot be assumed that the psychological characteristics of Negro pupils that he discovered in children who felt the impact of racial barriers in the deep south or in Negro children who are a lopsided racial minority in Boston are to be found in the Negro pupils of the District. It is speculation to apply Dr. Coles' findings to the District's public school children.

E.1.c. - This is a misstatement unless it is realized that informal and not formal education is being discussed. Dr. Brain indicated that where there is a classroom or school that has only pupils of one race -- white or Negro not specified -- or primarily of one race, an informal or social aspect of the educational experience acquired by personal contact between the races is not experienced by the pupil. (Tr. 5083.) See pages B-6 and B-7 of the defendants' proposed findings.

E.1.d. - Dr. Coles testified that the school is a "very" important part of a child's early life, not a "completely" important part, as plaintiffs state. The schools cannot, however, compensate for all the environmental disadvantages of its pupils. See page B-13 of the defendants' proposed findings.

E.1.e. - The defendants do not agree with this definition of a "ghetto" school. There are economic factors that ought to be considered in any such definition. Certainly, an adventitiously segregated white school in a high income area, or an adventitiously segregated high or middle income Negro school are not "ghetto" schools.

E.1.f. - Presuming that the historical status referred to is a mechanical estimation of lack of self worth traceable to slavery, it should be noted that Dr. Brain indicated that Negro children at school present

no different problems than any other disadvantaged minority group and that a history of slavery was not an added factor that had to be overcome by the school with a predominantly Negro enrollment. (Tr. 5064.) Commenting upon an all-Negro "ghetto" school, Mr. Dixon said that "If these ghetto children come to school and find a good school program with materials and equipment to be used in learning, if their teachers are friendly and willing to help them, if they are subject to all of the advantages of a school system in a city, to my mind this does more to relieve the frustrations that ghetto living may have on children or may create in children than the mere using textbooks where they see Negro children or more advantaged children or being in school with some children of another race." (Tr. 6162-63.)

E. 1. h. - This is a particular psychological finding made by Dr. Coles that should not apply to the District of Columbia since the District is substantially different from the settings where this psychological finding was observed. See the response of the defendants to the plaintiffs' proposed finding E. 1. b., page 48.

E. 1. i. - This finding has no basis in this record, for the testimony by Dr. Cline takes him outside the area of his expertise, testing. Further, his testimony was inextricably tied to the Office of Education Report. (Tr. 1422-26.) The Report was excluded by the Court at Tr. 3136.

E. 1. j. - This finding must be clarified. Dr. Brain testified that heterogeneous grouping of the races -- he spoke of no other heterogeneous grouping -- would overcome a denial of some of the informal aspects of education by reducing the amount of segregation

and allowing informal contacts by children of different races.

(Tr. 5084.)

E.1.k. - This is a philosophical belief held by Dr. Simons that is not grounded in any fact within or outside of this record. Dr. Simons said that "I could not say yes or no that (heterogeneous grouping at Lorton) is an actual factor (in achievement)". (Tr. 1621.) In fact, the grouping at Lorton was homogeneous, for as described by Dr. Simons, all the pupils at Lorton had very similar experiences. See Plaintiffs' Exhibit C-8 and the response of the defendants to plaintiffs' proposed finding b. iv., page 26.

Pages 48 and 49:

E.1.l., E.1.o., E.1.p. and E.1.r. - These findings have no basis in this record. All of these proposed findings are based upon the testimony of Dr. Coleman and the Office of Education Report. Any testimony by Dr. Coleman that relates to the Office of Education Report was excluded by order of the Court. (Tr. 3136.) The testimony relied upon in these findings was related to Dr. Coleman's work on this Report and is, therefore, excluded from evidence.

The wording of Dr. Coleman's testimony is almost verbatim from the summary chapter at the beginning of the Office of Education Report. (Plfs. A-4 and A-18, excluded.) Dr. Coleman admitted on cross-examination that his testimony that lead to these proposed findings was based at least in part upon the findings in the Office of Education Report. (Tr. 2139-48.) Beyond his experience with this Report, Dr. Coleman demonstrated no expertise whatsoever in the areas treated by these findings. His claimed expertise lies in the fields of educational games and the sociology of adolescence. See Tr. 2099-2107 (the vior dire) and Tr. 2136.

Furthermore, the proposed finding E. 1. 1. is contrary to the experience of the Baltimore City public school system described at pages B-11 and B-12 of the defendants' proposed findings.

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E. 2. a. and E. 2. d. - One should not presume from these findings that there is a formal academic detriment suffered by a Negro pupil attending a school with an all-Negro teaching staff any more than one should presume that there is a formal academic detriment suffered by a white pupil attending a school with an all-white teaching staff. It is the development of social contacts with other ethnic groups that the pupil may miss. (Tr. 5075-76.)

E. 2. b. and E. 2. c. - Again, these are particular observations made by Dr. Coles in settings substantially different from those obtaining in the District. See the response of defendants to the plaintiffs' proposed finding E. 1. b., page 48. By the logic of the plaintiffs' finding, introducing compensatory education to the classrooms of disadvantaged pupils would create in these pupils a similar feeling that something is being done on their behalf. See pages B-7 to B-9 of the defendants' proposed findings.

E. 2. e. - Dr. Hansen has asked the professional staff of the District public school system to volunteer for more difficult teaching assignments, but he has met with little success. See page D-14 of defendants' proposed findings. Defendants deny that the obligation referred to in the finding is a legal obligation.

E. 3. a. and E. 3. b. - Both of these findings are based upon the testimony of Dr. Coleman that has been excluded from this record by order of the Court. See the response of defendants to the plaintiffs' proposed findings E. 1. 1. et seq., page 48.

Proposed finding E. 3. b. is also based in part on the testimony of Dr. Coles. It is erroneous to offer testimony by Dr. Coles as a basis for a finding on the academic benefits or detriments of desegregated or segregated education in the District of Columbia or anywhere else in the United States. Dr. Coles was not offered as an expert in academic matters but in child psychiatry. (Plfs. A-24, page 14.) Dr. Coles has done longitudinal studies of 44 Negro pupils going from segregated to desegregated public schools, 30 pupils in Boston, 10 in Atlanta, and 4 in New Orleans. He has not used, nor is it his profession to use, aptitude or achievement tests. (Plfs. A-24, page 14.) He said that he has noted, informally, some improvements in academic standing, but Dr. Coles himself disclaims any ability or desire to generalize beyond these particular children about changes in academic ability of Negro children moving from segregated to a desegregated school. (Plfs. A-24, pages 33 and 47.)

E. 3. c. - Miss Lyons indicated that she was discussing education in the social, informal sense rather than in the academic sense, for children learn academically from the teacher, not from each other. (Tr. 3065-69.)

Page 50:

E. 4. a. - This finding is not supported by the record.

At Tr. 197, there was a discussion of the findings of the Office of Education Report, which has been excluded from this case. Dr. Hansen was talking about a better "educational experience" and did not enumerate the composition of this educational experience. Furthermore, Dr. Hansen indicated what the report claimed and not whether he was in agreement with these claims.

At Tr. 6558-60, Dr. Cline has returned to the stand again for the plaintiffs. He brought with him some material on a Syracuse University study of which he was not a part (Plfs. W-29 and W-30), which material was excluded from evidence. (Tr. 6553-55.) There is no basis in the testimony of Dr. Cline beyond this excluded evidence that was given as the basis for his opinion, other than a vague statement of his education and readings. The defendants' objections to Dr. Cline testifying to this matter are set out at Tr. 6556-57.

Again, it is incorrect to refer to Dr. Coles for a discussion of academic success in segregated and desegregated schools. See the response of defendants to the plaintiffs' proposed finding E. 3. b., page 49.

- E. 4. b. - It is not proper that Dr. Coles' testimony be referred to to substantiate either psychological or academic improvements of pupils in desegregated schools. See the defendants' responses to the plaintiffs' proposed findings E. 1. b., page 48 and E. 3. b., page 49.
- E. 4. d. - This finding arises from Dr. Coles' experience with 30 Boston Negro pupils. He stated at page 33 of his deposition, Plaintiffs' Exhibit A-24, that "Now, I'm not making any generalizations" beyond this particular situation.
- E. 4. e. - Whether or not such educational loss is or is not permanent is speculation beyond this record. There is an initial loss, but in discussing permanent loss, Dr. Brain said that, "I can't really answer the permanent loss. How much loss that is made up subsequently depends entirely upon the school situation in which the youngster is assigned * * *". (Tr. 5099.)

F. I. b. - This finding should speak of "learning opportunities" rather than "earning opportunities". The obligation referred to is not a legal obligation. It may be a professional obligation however. Even on that basis it is doubted that public school educators would be professionally obligated to adapt their "typical educational arrangements" to provide the best learning opportunities for that segment of the school population that is disadvantaged -- nor, indeed, for the advantaged or any other fragment of the school community.

F. I. c. - The legal role of the public school is to provide pupils with an equal educational opportunity. In the obvious context of his testimony, Dr. Brain did not say that all pupils upon graduation from public school should have the same occupational or educational expectations. The role described by Dr. Brain more likely means the extension of a greater educational offering to the disadvantaged pupil in the form of compensatory education than the education extended to the nondisadvantaged pupil. (Tr. 5071.)

F. I. f. - These programs would be largely through voluntary cooperative arrangements with private schools within the District and public schools in the suburbs. (Tr. 5094.)

F. I. g. - The use of the word "possible" is not justified on this record. Dr. Brain emphasized the practical difficulties of achieving racially integrated faculties. (Tr. 5077-80.) Again, the word "obligation" refers in the full context of Dr. Brain's testimony not to a legal but professional obligation.

F. 2. a., F. 2. b. and F. 2. c. - See generally pages B-9 and B-10 of defendants' proposed findings.

F. 2. b. - There are many very practical problems, including matters of the costs of educational parks that are ignored by some so-called experts. (Tr. 6007-10.)

F. 2. c. - A physical separation of schools within an educational park would increase the size of the land that had to be taken for the project.

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F. 3. a. and F. 3. b. - See generally pages B-10 to B-13 of the defendants' proposed findings.

F. 3. a. - This finding is not supported by the record because it is based upon the testimony of Dr. Coles. As to the worth of his opinion in educational and psychological matters in this lawsuit see defendants' responses to the plaintiffs' proposed findings E. 1. b., page 48, and E. 3. b., page 49.

F. 3. b. - This view is "idealistic" and contrary to "common experience" with consolidated school districts. (Tr. 5090.)

F. 6. a. - This is Dr. Haynes definition of team teaching.

F. 6. c. - There is no basis in this record for this finding beyond the unsubstantiated assertion of the witness. The formal action of the Board expressed in the Court's Exhibit I demonstrates that team teaching is not considered to be an alternative to the track system.

F. 6. d. - The school system has not employed team teaching on a system wide basis. Experimentation in team teaching is going on in the Model School Program. (Tr. 482.)

F. 6. e. - The record does not indicate the degree to which the pupil-teacher ratio was reduced to produce a measurable gain in educational achievement in the particular situation in Baltimore described by

Dr. Brain. This entire record gives no indication of the deviation in the pupil-teacher ratio that will produce a substantial difference in the quality of the educational offering. All other things being equal, it would seem reasonable to assume that a ratio of 30-1 would generally produce a higher educational achievement than a ratio of 50-1, but when the variation is in the order of a few pupils per teacher, there is no evidence that the quality or effect of education is substantially affected. See Tr. 6319 wherein Dr. Dailey indicates that the physical characteristics of a school, including the size of the classes, do not appear to materially affect how well the children do in school.

F. 6. f. - See pages B-3 and B-4 of defendants' proposed findings.

Errata

The Patterson Elementary School has been considered by the defendants in its proposed findings of fact filed on December 21, 1966, to have been a school with a predominantly Negro enrollment. To the contrary, Patterson has a predominantly white enrollment, with 819 white pupils and 254 Negro pupils during the 1965-66 school year. At the beginning of the 1966-67 school year the enrollment was 740 whites and 444 Negroes. Certain errors in the defendants' proposed findings derive from this initial error.

Page B-2 - At the nineteenth line, the word "thirteen" should be changed to "fourteen" so that the sentence reads that "Fourteen elementary schools had predominantly white enrollments."

Pages D-17 and D-18 - The sentence beginning at the bottom of page D-17 and continuing to page D-18 should read that "The only predominantly white schools serving a neighborhood with an income level \$7,000 or less are the Orr and Patterson elementary schools. Half of the Orr staff are non-tenure appointments. A third of the Patterson staff are non-tenure appointments." (The new matter is underscored.)

Pages F-20 and F-21 - The sentence beginning at the ninth line of page F-20 should read that "Of these 29, 11 had predominantly white pupil populations and 18 had predominantly Negro pupil populations." The following sentence should read that "Twelve of the fourteen predominantly white elementary schools in the District serve neighborhoods with income levels in excess of \$9,000."

The sentence beginning on line fourteen of page F-20 should read that "Orr Elementary School is one of two schools with predominantly white enrollments that serves a middle income neighborhood (\$6,000 to \$6,999) and it did not offer an honors program during 1965-66." Thereafter, this sentence should be added. "The other school, Patterson, did offer an honors program during 1965-66."

In the last full paragraph of page F-20 the figure "23" should be substituted wherever the figure "24" appears to indicate the number of schools with predominantly Negro enrollments that do not have special academic classes.

The paragraph that begins at the bottom of page F-20 and continues to page F-21 should read as follows: "Of the 14 predominantly white elementary schools in the District, 12 of them did not have a special academic program in the school. Eleven of these twelve schools serve neighborhoods with income levels starting at \$9,000-\$9,999 and up. The twelfth school, Patterson, serves a neighborhood with an income level of \$6,000 to \$6,999. The pupil population within these twelve schools ranged from 130 (Fillmore) to 1073 (Patterson)." (The new matter is underscored.)

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CHARLES T. DUNCAN,
Corporation Counsel, D.C.

JOHN A. EARNEST,
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JAMES M. CASHMAN,
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Special Assistant Corporation Counsel, D.C.

ROBERT R. REDMON
Special Assistant Corporation Counsel, D.C.
Attorneys for the Defendants

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing Defendants' Response to Plaintiffs' Proposed Findings of Fact was mailed, postage prepaid, to Jerry D. Anker, Esq., 1001 Connecticut Avenue, N.W., Washington, D.C., and William M. Kunstler, Esq., 511 Fifth Avenue, New York, New York, Attorneys for Plaintiffs, and to Joseph M. Hannon, Esq., Assistant United States Attorney, Attorney for defendant Judges, United States Court House, Washington, D.C., this 3rd day of February, 1967.

JAMES M. CASHMAN,
Assistant Corporation Counsel, D.C.,
Attorney for the Defendants,
District Building,
Washington, D.C. 20004

[Filed July 17, 1967]

NOTICE OF APPEAL

Notice is hereby given this 17th day of July, 1967, that Carl F. Hansen, Superintendent of Schools of the District of Columbia, hereby appeals to the United States Court of Appeals for the District of Columbia from the judgment of this Court entered on the 19th day of June, 1967 in favor of the plaintiffs against said defendant and all other defendants except the Judges of this Court.

F. Joseph Donohue, Thomas S. Jackson,
Edmund D. Campbell, John L. Laskey

By /s/ Thomas S. Jackson
Attorney for

Carl F. Hansen, Superintendent of
Schools of the District of Columbia

c/o Jackson, Gray & Laskey
1701 K Street, N. W.
Washington, D. C. 20006

[Certificate of Service]

[Filed July 17, 1967]

NOTICE OF APPEAL

Notice is hereby given this 17th day of July, 1967, that Carl C. Smuck, a member of the Board of Education of the District of Columbia hereby appeals to the United States Court of Appeals for the District of Columbia from the judgment of this Court entered on the 19th day of June, 1967 in favor of the plaintiffs

against said defendants and all other defendants except the Judges of this Court.

F. Joseph Dononue, Thomas S. Jackson
Edmund C. Campbell, John L. Laskey

By /s/ Thomas S. Jackson

[Certificate of Service]

[Filed July 17, 1967]

MOTION OF CARL F. HANSEN
6946 Greenvale Street, N. W.
Washington, D. C.
TO INTERVENE INDIVIDUALLY AND
ON BEHALF OF OTHER INTERESTED
PERSONS FOR THE PURPOSE OF PRO-
SECUTING AN APPEAL HEREIN

Comes now Carl F. Hansen, by his attorneys, and moves this Honorable Court to enter herein an order permitting him to be aligned as a party defendant individually and on behalf of other citizens, residents and taxpayers of the District of Columbia; and on behalf of pupils, teachers and parents who disagree with the Judgment of this Honorable Court entered the 19th day of June, 1967. For grounds therefor said Carl F. Hansen says:

1. He is the same person whose acts and recommendations as Superintendent of Schools of the District of Columbia were challenged by the Complaint herein and have been condemned, criticized, and held to be unlawful and unconstitutional in law and fact by the Opinion, Findings of Fact, Conclusions of Law and Judgment of this Court entered herein on the 19th day of June, 1967.
2. Said Carl F. Hansen has an interest individually relating to the transactions which are the subject of this action in that

(a) His personal reputation in his profession as an Educator and School Administrator has been attacked and damaged by said Opinion and Judgment of this Court.

(b)(1) As a result of his conscientious disagreement with the legal and education validity of the said Judgment and Findings of Fact, Conclusions of Law and Opinion upon which the same is based, he has been required to retire effective July 31, 1967, as Superintendent of Schools, notwithstanding that he is entitled, under contract with the Board of Education, to continue as such Superintendent until the 21st day of May, 1970. By reason thereof his salary will be discontinued and he will suffer great financial loss amounting to approximately \$14,000.00 per annum for the duration of his said contract.

(2) As a result of the damage to his reputation and standing in his profession, as asserted in (a) above, his earning capacity through employment, writing and publication has been damaged and impaired.

(c) He is a resident and taxpayer of the District of Columbia and as such has an interest in the public expense involved in compliance by the Board of Education with the said Judgment of this Court.

(d) As a citizen, resident and taxpayer of the District of Columbia, he is vitally concerned with the administration of the school system of the District of Columbia by the agency charged by law with the same, namely, the said Board of Education, and he is further concerned that the Judgment of this Court, which he verily and sincerely believes constitutes an unlawful judicial invasion into the administration of schools and the formulation of education policies, the acceptance of which he also believes is an abdication by the Board of Education of its legal responsibilities, shall not become a precedent in the District of Columbia or elsewhere throughout the United States of America.

3. He has been trained and educated as a professional Educator and professional School Administrator. As such he has a personal, direct interest in the educational welfare of all students, whether children, or adults in the schools of the District of Columbia, and in their parents, and (in the interest of said students) in the welfare of the teachers of said students. Believing, as he does, that the Judgment of this Court is erroneous and will operate adversely to the interests of all such persons, and will have the effect of driving the races apart instead of tending toward true integration, by compelling educational policies based primarily on considerations of race and affluence, he conceives that he has such interest in this action as justifies his prosecution of an appeal herein. He requests this Court to take judicial notice of substantial community dissent from the said Opinion and Judgment. The Board of Education, by its action in accepting said Opinion and Judgment and declining an appeal therefrom, does not represent the dissenting element of the said Board, or of the students, parents and teachers.

4. He is so situated that the disposition of this action may as a practical matter impair or impede his ability to protect his interests aforesaid, and his interest is not adequately represented by existing parties; for the following reasons:

(a) He anticipates that he will shortly, i.e., after July 31, 1967, be replaced by someone else as Superintendent of Schools.

(b) The Board of Education has adopted a motion purporting to order him "as an employee of the Board of Education" not to appeal the said Judgment, which order he has been advised is invalid as depriving him of his civil rights and due process of law as required by the Fifth and Fourteenth Amendments to the Constitution of the United States, but which order if sustained has deprived him of any right to appeal said Judgment in his capacity as Superintendent of Schools as aforesaid.

(c) The Board of Education has adopted a motion not to appeal said Judgment and the Board of Commissioners of the District of Columbia have not responded to his request that they support him in his appeal herein, so that its and his representation herein by the Corporation Counsel of the District of Columbia is apparently no longer available to him nor to those whose interest he verily believes he also represents herein.

5. In the capacity in which he files this motion, he has not had any effective, formal assistance of counsel until the 12th day of July, 1967, when he concluded that he was unable to wait longer for action by the Board of Commissioners and first consulted his present counsel.

6. By reason of the foregoing, he is advised and believes and therefore asserts that he is entitled to intervene herein as a matter of right in his individual capacity.

7. He intends to note and prosecute an appeal herein on the present record, and prays that this motion be taken and considered as a notice of appeal effective as of the date of the filing hereof.

/s/ Carl F. Hansen

/s/ Thomas S. Jackson
Attorney for Carl F. Hansen

[Jurat]

[Certificate of Service]

[Filed July 19, 1967]

MOTION TO INTERVENE OF REVEREND WILLIAM D. JACKSON, MARGARET G. CARTER, KATHERINE MCKAY, WILKINSON, CHARLES TAIT TRUSSELL AND WOODLEY G. TRUSSELL, DR. MICHAEL MANN DUFFY AND CAROLINE C. DUFFY, REVEREND ERNEST R. STEVENSON, ROBERT E. NELSON AND BARBARA A. NELSON, VAN H. SEAGRAVES AND ELEANOR SEAGRAVES, JOHN R. IMMER AND MARJORY D. IMMER, WM. E. WELD, JR. AND JANE WELD, RICHARD A. HENDRICKS AND DAWN C. HENDRICKS, REV. AND MRS. CLEVELAND B. SPARROW

Come now Reverend William D. Jackson, Margaret G. Carter, Katherine McKay Wilkinson, Charles Tait Trussell and Woodley G. Trussell, Dr. Michael Mann Duffy and Caroline C. Duffy, Reverend Ernest R. Stevenson, Robert E. Nelson and Barbara A. Nelson, Van H. Seagraves and Eleanor Seagraves, John R. Immer and Marjory J. Immer, Wm. E. Weld, and Jane Weld, Richard A. Hendricks and Dawn C. Hendricks, and Rev. and Mrs. Cleveland B. Sparrow and move this Honorable Court for an order permitting them to intervene as parties defendant for the purpose of noting herein and prosecuting an appeal from the Judgment entered the 19th day of June, 1967; and for grounds therefor say:

1. Reverend William D. Jackson resides at 44 - 58th Street, S.E., Washington, D.C. and is the parent of three children, of whom two are students in the public schools of the District of Columbia.
2. Margaret G. Carter resides at 4630 B Street, S.E., Washington, D.C. and is the parent of a child in the public schools of the District of Columbia.
3. Katherine McKay Wilkinson resides at 4308 Forest Lane, N.W., Washington, D.C., and is the parent of a child in the public schools of the District of Columbia.

4. Charles Tait Trussell and Woodley G. Trussell reside at 4414 Klinge Street, N.W., Washington, D.C. and are the parents of two children in the public schools of the District of Columbia.

5. Dr. Micahel Mann Duffy and Caroline C. Duffy reside at 2424 Foxhall Road, N.W., Washington, D.C. and are the parents of two children in the public schools of the District of Columbia.

6. Reverend Ernest R. Stevenson resides at 1302 F Street, N.E., Washington, D.C. and is the parent of three children in the public schools of the District of Columbia.

7. Robert E. Nelson and Barbara A. Nelson reside at 1751 Lanier Place, N.W., Washington, D.C. and are the parents of children in the public schools of the District of Columbia.

8. Van H. Seagraves and Eleanor Seagraves reside at 1813 Shepherd Street, N.W., Washington, D.C. and are the parents of three children in the public schools of the District of Columbia.

9. John R. Immer and Marjory J. Immer reside at 1638 19th Street, N.W. Washington, D.C. and are the parents of Children in the public schools of the District of Columbia.

10. Wm. E. Weld, Jr. and Jane Weld, Jr., reside at 3911 Argyle Terrace, N.W., Washington, D.C. and are the parents of children in the public schools of the District of Columbia.

11. Richard A. Hendricks and Dawn C. Hendricks reside at 3833 Windom Place, N.W., Washington, D.C. and are the parents of four children, of whom two are students in the public schools of the District of Columbia.

12. Reverend and Mrs. Cleveland B. Sparrow reside at 843 52nd Street, N.E., Washington, D.C. and are the parents of two children in the public schools of the District of Columbia.

13. All of the above named parents dissent from and desire an appellate review of the Judgment of this Court entered the 19th day of June, 1967; and they are advised and believe that as parents of children in the public schools in the District of Columbia they have such interest as entitles them to a right to intervene for the purpose aforesaid.

14. Each of the foregoing apprehends that no other party adequately or fully represents his or her interest.

15. Each of the foregoing intends to prosecute an appeal herein from said Judgment on the present record; and prays that this Court take and consider this motion as their joint notice of appeal effective as of the date of the filing hereof.

Respectfully submitted,

F. Joseph Donohue
Thomas S. Jackson
Edmund D. Campbell
John L. Laskey

By /s/ Thomas S. Jackson
Attorneys for Intervenors

[Certificate of Service]

[Filed July 27, 1967]

MOTION TO DISMISS APPEALS

Appellees, by their attorneys, respectfully move to dismiss the purported notices of appeal filed in the United States District Court for the District of Columbia by CARL F. HANSEN, individually and as Superintendent of Schools of the District of Columbia, CARL SMUCK as a member of the Board of Education of the District of Columbia, LAWRENCE A. WILKINSON and REVEREND WILLIAM D. JACKSON, MARGARET G. CARTER, KATHERINE McKAY WILKINSON, CHARLES TAIT TRUSSELL and WOODLEY G. TRUSSELL, DR. MICHAEL MANN DUFFY and CAROLINE C. DUFFY, REVEREND ERNEST R. STEVENSON, ROBERT E. NELSON and BARBARA A. SON, VAN H. SEAGRAVES and ELEANOR SEAGRAVES, JOHN R. IMMER and MARJORY J. IMMER, WILLIAM E. WELD, JR. and JANE WELD, RICHARD A. HENDRICKS and DAWN C. HENDRICKS, REVEREND and MRS. CLEVELAND B. SPARROW, on the grounds that:

1. All purported appellants except CARL F. HANSEN, as Superintendent of Schools of the District of Columbia, and CARL SMUCK, are not and were not parties to the action below;
2. All purported appellants lack sufficient standing to institute said appeals;
3. There is no case or controversy existing between appellees and these appellants or some of them;
4. The decree appealed from is not binding on these appellants or some of them;
5. The issues sought to be raised by the purported appeal are moot as to these appellants or some of them;
6. The issues sought to be reviewed by these appellants or some of them are insubstantial; and
7. The notices of appeal, or some of them, do

not conform to the requirements of Rule 73 of the Federal Rules of Civil Procedure.

Respectfully submitted,
/s/ William M. Kunstler
Attorney for Appellees

Dated: July 27, 1966
Washington, D.C.

[Filed July 28, 1967]

PRAECIPE

The Clerk of the Court will please withdraw the appearance of Messrs. Charles T. Duncan, Corporation Counsel, D.C.; John A. Earnest, Assistant Corporation Counsel, D.C.; Matthew J. Mullaney, Jr., Assistant Corporation Counsel, D.C.; James M. Cashman, formerly Assistant Corporation Counsel, D.C.; William F. Patten, formerly Assistant Corporation Counsel, D.C. and Robert R. Redmon, formerly Assistant Corporation Counsel, D.C., as counsel for Dr. Carl F. Hansen, it appearing that he is now represented by other counsel before this Court.

/s/ Charles T. Duncan

/s/ John A. Earnest

/s/ Matthew J. Mullaney,
Jr.

/s/ James M. Cashman

/s/ William F. Patten

/s/ Robert R. Redmon

[Certificate of Service]

[Filed August 7, 1967]

STATEMENT OF POINTS ON APPEAL

Comes now the Appellant (defendant below) and says that the following are the points upon which he intends to rely upon this appeal:

1. In the absence of a ruling thereon prior to the argument of this case upon the merits, defendant refers to and prays to be read as part hereof those grounds asserted in the motion to reverse and remand with directions to vacate the judgment of June 19, 1967, filed herein the 7th day of August, 1967.

2. The District Court erred in failing to find and conclude that the defendants had in good faith attempted to comply with the Constitution States as interpreted by the Supreme Court of the United States, and in failing to find and conclude such good faith had been exercised by the defendants.

3. The District Court erred in failing to find and conclude that imbalances in the racial composition of the student enrollment among the several schools resulted from causes other than actions of the defendants; that the actions and policies of the defendants in good faith taken in part to compensate for such racial imbalances, had at least met Constitutional requirements; and that the extent to which policies with relation to pupil enrollment, compatible with educational policy, should attempt to effect integration in each school to conform with Negro-white population ratios, was a matter for the defendants in their professional capacities and not subject to judicial review.

4. The District Court erred in directing the abolition of the "track system" and, in effect, in prohibiting the exercise by the Board of Education of its judgment and discretion concerning the establishment of curricula based upon ability grouping.

5. The District Court erred in receiving into evidence many documents and material, social studies,

and other material not properly proved as required by the laws of evidence and containing statements and factual assertions not proved by any competent evidence, including but not limited to non-governmental reports and studies, newspaper and journal articles, Congressional committee reports, etc.

6. The District Court erred in finding and concluding that the neighborhood school system, as it functions in the District of Columbia, was unconstitutional, and in directing the abolition thereof and the optional zones created by the defendants with respect thereto.

7. The District Court erred in directing the defendants that any plan submitted pursuant to the opinion of the Court must contemplate the bussing of children from schools in their neighborhoods to schools out of their neighborhoods for the purpose of effecting greater racial balance.

8. The District Court erred in failing to find, hold and conclude that there is no such marked imbalance of racial composition of individual schools in relation to the population of the area served by each to require judicial interference with the judgment of the Board of Education concerning pupil and teacher assignments.

9. The District Court erred in finding and concluding that the Board of Education acted contrary to the constitutional rights of the plaintiffs in adopting a policy of not requiring involuntary teacher assignments, and in not requiring involuntary pupil enrollments in schools out of their neighborhoods.

10. The District Court erred in finding and holding that concentrations of Negro population through immigration into the District of Columbia, during the period subsequent to 1954 were involuntary, in describing the same as ghettos, implying compulsion, and in failing to find and hold that the defendants had not been guilty of participating in any such compulsion; but on the contrary in failing to find and hold that in

major part, at least, concentrations of Negro population in specific areas of the city had been voluntary, and that many areas of the city have in said period been converted from predominantly white to predominantly Negro by voluntary sales and leases to Negroes; and in failing to find and hold that, there being ample regulatory prohibition against discrimination in housing, an attempt by the Board of Education to use school children as a device to overcome population imbalances was unconstitutional.

11. The District Court erred in failing to apply and give jurisdiction consideration to the policy of the legislature, i.e., Congress, in numerous recent statutes, including but not limited to the Civil Rights Act of 1964, that there should be no requirement in the adoption of educational policies that racial imbalances should be corrected by the distribution of children out of their immediate respective neighborhoods.

Respectfully submitted,

/s/ John L. Laskey
Attorney for Appellants

[Certificate of Service]

[Filed August 7, 1967]

STATEMENT OF POINTS ON APPEAL

Comes now the Appellant Carl F. Hansen (defendant below), and says that the points upon which he intends to rely upon this appeal are identical with those set forth in the Statement of Points on Appeal filed in No. 21,167, by the Appellant Carl C. Smuck.

Respectfully submitted,

/s/ John L. Laskey
Attorney for Appellants

[Certificate of Service]

[Filed August 7, 1967]

**MOTION TO REMAND AND REVERSE
WITH DIRECTIONS TO THE DISTRICT
COURT TO VACATE THE JUDGMENT
OF JUNE 19, 1967**

The Appellant, Carl F. Hansen, and the Petitioners for Intervention, Reverend William D. Jackson, et al., move this Honorable Court to vacate the Judgment and Order of the District Judge of June 19, 1967, herein, and to remand the case to the District Court for retrial thereof upon the grounds and for the reasons set forth in the identical Motion filed in No. 21167, which this Appellant incorporates herein.

Respectfully submitted,
/s/ John L. Laskey
Attorney for Appellants

[Filed January 3, 1968]

ORDER

It appearing that, pursuant to the order of this court, the defendant Board of Education on January 2, 1968, filed herein a copy of its plans for pupil and teacher assignment to comply with the principles announced in this court's decision of June 19, 1967; and

It further appearing that in understanding and appraising these plans a copy of A Study of the Washington, D.C. Public Schools made by the Teachers College of Columbia University, the so-called Passow Report, may be useful;

It is ORDERED that on or before January 10, 1968, the Board of Education file in the record of this case a copy of the said Passow Report.

/s/ J. Skelly Wright
United States Circuit Judge*

January 3, 1968

* Sitting by designation pursuant to 28 U.S.C. § 291(c).

[Filed February 19, 1968]

William M. Kunstler, Washington, D.C., and Jerry D. Anker, Washington, D.C., for plaintiffs.

F. Joseph Donohue, Thomas S. Jackson, Edmund D. Campbell and John L. Laskey, Washington, D.C., for petitioners for inteevention.

WRIGHT, Circuit Judge:*

On June 19, 1967, this court held that in various respects the District of Columbia school system denied Negro and poor children their constitutional right to equal educational opportunity, and entered a decree in accordance with that judgment. Hobson v. Hansen, D. D.C., 269 F. Supp. 401 (1967). Thereafter the defendant Board of Education, on July 1, voted six-to-two not to appeal, and by a vote of seven-to-two ordered Dr. Carl Hansen, in his then capacity of Superintendent of Schools, not to appeal; Dr. Hansen subsequently resigned effective July 31. Since July 1 the Board of Education has been actively pursuing a course of action designed to implement the court's decree, and on January 2, 1968, filed its preliminary report of compliance.

On July 17 Dr. Hansen, as Superintendent, and Mr. Carl Smuck, one of the two dissenting members of the Board, filed notices of appeal, and on the same day attorneys representing Dr. Hansen filed a motion under Rule 24, Federal Rules of Civil Procedure, to intervene as a party for purposes of taking an appeal from this court's decision. This was followed on July 19 by two other motions to intervene, one on behalf of 20 parents (or 12 families) whose children

*Sitting by designation pursuant to 28 U.S.C. § 291(c).

are enrolled in the District schools, and one on behalf of Mr. Lawrence A. Wilkinson, as a teacher in the District school system and as a parent of four children enrolled in a private parochial elementary school. Coupled with these motions to intervene were notices of appeal. Comparable motions to intervene for purposes of taking an appeal were also filed directly in the Court of Appeals itself. Mr. Wilkinson's motion has since been withdrawn and he no longer seeks to participate in this case. Plaintiff Hobson moved the court to dismiss the appeals and opposed the various motions to intervene.

A timely direct appeal having been filed by Dr. Hansen and Mr. Smuck, jurisdiction over the case passed to the Court of Appeals. Consequently, this court was without jurisdiction to pass on these motions until the Court of Appeals acted. United States v. Radice, 2 Cir., 40 F.2d 445 (1930); see Distinti v. Cunningham, 106 U.S. App. D.C. 299, 272 F.2d 528 (1959); American Brake Shoe & Foundry Co. v. Interborough Rapid Transit Co., S.D. N.Y., 3 F.R.D. 162 (1942). Accord: Bromschwig v. Carthage Marble & White Lime Co., Mo. Sup. Ct., 68 S.W. 820 (1953); City of St. Louis v. Silk, St. Louis Ct. App., 199 S.W. 2d 23 (1947). See also 3A W. Barron & A. Holtzoff, Federal Practice and Procedure § 1558 (Wright ed. 1958); 7 I. Moore, Federal Practice Par. 73.13 (2d ed. 1966).

On December 18, 1967, the Court of Appeals decided to hold Dr. Hansen's and Mr. Smuck's direct appeals in abeyance and remanded the motions to intervene for a hearing in this court. At the ensuing hearing on January 23, 1968, the attorneys for the intervenors renewed their motions to intervene and also moved for the first time for a stay of this court's decision pending appeal. This court denies the stay and grants the motions to intervene.

Stay.

In Hobson v. Hansen, 269 F. Supp. 401, this court found that Negro and poor children of the District of

Columbia school system were being denied their constitutional right to equal educational opportunity. It ordered the school board to act to remedy the situation. Though Dr. Hansen, in his capacity as Superintendent of Schools, and Mr. Smuck, in his capacity as school board member, were named as party-defendants, neither was an indispensable party and the suit could have been brought against the school board itself as a governmental entity. Nothing in this court's decree implementing its decision runs against Mr. Smuck individually or against Dr. Hansen now that he has resigned his position as Superintendent. The school board, on the other hand, against whom the decree does run, has voted not to appeal it, has not requested a stay, and is voluntarily trying to comply with it. There is no reason, therefore, to grant a stay on the motion of Dr. Hansen.

The 20 parents of an unknown number of children also request a stay pending appeal. The parents are suing in behalf of their own children and do not seek to raise the rights of others. There is no suggestion that these parents are members of a class of any kind. They do not allege how the decree affects them or what legitimate interests of theirs would be protected by a stay.

The grant of a stay is discretionary with the court. Rule 62, Fed. R. Civ. P. Here this court has found that thousands of schoolchildren are being denied their constitutional rights. A stay would perpetuate this continuing and essentially irreparable injury. The school board, the party charged by statute with operating the District schools and the only party bound by the decree, does not take exception to it. On the other side we have the parents of a handful of students, perhaps 10 or 15 out of a school population of 149,000, who for unspecified reasons "dissent from" the decree and who have not even alleged how they are affected by it. This court has no hesitation in denying the motions for a stay pending appeal.

Intervention.

Petitioner Hansen and a group of 20 parents seek to intervene as a matter of right pursuant to Rule 24 (a), Fed. R. Civ. P. That rule, in relevant part, provides:

"Intervention of right. Upon timely application anyone shall be permitted to intervene in an action: * * * (2) when the applicant claims an interest relating to the property or transaction which is the subject of the action and he is so situated that the disposition of the action may as a practical matter impair or impede his ability to protect that interest, unless the applicant's interest is adequately represented by existing parties."

To intervene, then, petitioners must establish, first, that they have an interest in the proceeding, second, that they are "so situated that the disposition of the action may as a practical matter impair or impede [their] ability to protect" it, and, third, that their interest is not being adequately represented by existing parties. And in seeking to intervene after final judgment, petitioners must meet an especially heavy burden. For though the rule does not in terms distinguish between intervention before and after final judgment, post-judgment motions are rare and at this stage of the proceedings Rule 24 should generally be applied less liberally.

This is so because the rule is couched in terms of "timely application," which makes it appropriate to take into account the stage of the proceedings. The Revisers have included the following caveat in their Notes: "An intervention of right under the amended rule may be subject to appropriate conditions or restrictions responsive among other things to the requirements of efficient conduct of the proceedings." See Notes of Advisory Committee on Rules, Rule 24, 28 U.S.C.A. (1967 Pocket Part). More importantly, courts have in the past recognized the need for a particularly careful screening of post-judgment motions.

See United States v. Blue Chip Stamp Co., C.D. Calif. 272 F. Supp. 432 and cases cited therein at 436-437 (1967); 2 W. Barron & A. Holtzoff, Federal Practice and Procedure § 594 (Wright ed. 1961) ("Intervention may be allowed after a final judgment or decree if it is necessary to preserve some right which cannot otherwise be protected, but such intervention will not be permitted unless a strong showing is made."); see also 4 I. Moore, Federal Practice § 24.13 (2d ed. 1967). But before discussing whether petitioners have successfully made such a showing, a brief general discussion of Rule 24 and some of the cases decided under it is in order.

Few cases have focused on the kind of interest required by Rule 24. Before the rule was revised in 1966, it contained two subdivisions requiring that the petitioner either be legally "bound by a judgment" or "so situated as to be adversely affected by a distribution or other disposition of property which is in the custody or subject to the control or disposition of the court or an officer thereof." Rule 24(a)(2) and (3), 28 U.S.C.A. (1958). Typically, the question of interest was subsumed in the questions of whether the petitioner would be bound or of what was the nature of his property interest.¹ The touchstones were the familiar concepts of res judicata or traditional property rights. Now, however, we are to analyze the petitioner's position in terms of whether as a "practical matter" the disposition of the action will adversely affect his ability to protect his interest. Obviously, before any practical judgment can be made we must know what the interest is; thus one effect of the new

¹"While the subdivision refers to the applicant's 'interest', decision on the right to intervene should not turn on whether or not the applicant has an 'interest' in the subject matter of the controversy, but on the less hazy question: is there a possibility that applicant will be bound by the judgment?" 4 J. Moore, Federal Practice § 24.08 at 37; § 24.09 (2d ed. 1967).

rule is to focus attention directly on the concept of "interest."

The pre-1966 cases that tried to define the kind of interest required state that the interest must be "a legal interest as distinguished from interests of a general and indefinite character which do not give rise to definite legal rights'." Brotherhood of Ry. & S.S. Clerks v. Atlantic Coast Line R. Co., D. N.C. 88 F. Supp. 115, 119, affirmed, sub nom., Rose v. Brotherhood of Railway & Steamship Clerks, 4 Cir. 181 F.2d 944, cert. denied, 340 U.S. 851 (1950). See Reynolds v. Marlene Industries Corp., S.D.N.Y., 250 F. Supp. 722 (1966). And more specifically, "'interest' * * * means a specific legal or equitable interest in the chose," Toles v. United States, 10 Cir., 371 F.2d 784, 786 (1967); "[t]he primary essential element that must exist * * * is that [petitioner] have a direct personal or pecuniary interest in the subject of the litigation," Commonwealth Edison Co. v. Allis-Chalmers Mfg. Co., 7 Cir., 315 F.2d 564, 566, cert. denied, sub nom. Illinois v. Commonwealth Edison Co., 375 U. S. 834 (§963); "[a] party seeking to intervene * * * must have some substantial legal interest to protect by his intervention," Greene v. Verven, D. 203 F.Supp. 607, 610 (1962).

Effect of the 1966 revision. Rule 24 was amended as of July 1966 to overcome objections that conceptual difficulties with the principles of res judicata and property rights had made the rule unduly restrictive. See Notes of Advisory Committee on Rules, Rule 24(a), 28 U.S.C.A. (1967 Pocket Part); Cascade Natural Gas Corp. v. El Paso Natural Gas Co., 386 U.S. 129, 153-154 (1967) (Mr. Justice Stewart, dissenting); Cohn, The New Federal Rules of Procedure, 54 Geo. L. J. 1198, 1229-1232 (1966). But how far the revisions go toward expanding the scope of Rule 24(a) is unclear.

The Notes to ~~the~~ new rule indicate that the Petitioner's interest should be clearly related (directly or indirectly) to the subject matter of the action, and

suggest that that interest be a substantial one. The Revisers say: "If an absentee would be substantially affected in a practical sense by the determination made in an action, he should, as a general rule, be entitled to intervene * * *. Intervention of right is here seen to be a kind of counterpart to Rule 19 (a) (2) (i)²* * *: where, upon motion of a party in an action, an absentee should be joined so that he may protect his interest * * * he ought to have a right to intervene in the action on his own motion." (Emphasis added.)

The rule also ties in to Rule 23 dealing with class actions. However, as the Notes indicate, a class action presupposes a judgment that will extend by its terms to the petitioner— one that operates directly on the petitioner. The rule has been amended to make intervention easier at the trial stage, whereas before the change a petitioner often had a problem of predicting how his rights would be hurt. Thus he would be met with the cul-de-sac that if representation of his interest proved inadequate, then he would not be bound by the judgment; and of course if he could not establish inadequate representation, then by the terms of the rule he could not intervene. But while one's interests need no longer be decisively affected before intervention will be allowed, there is

²Rule 19(a)(2)(i), Fed. R. Civ. P., in pertinent part reads:

"Rule 19. Joinder of Persons Needed for Just Adjudication

"(a) Persons to be Joined if Feasible. A. person who is subject to service of process and whose joinder will not deprive the court of jurisdiction over the subject matter of the action shall be joined as a party in the action if * * * (2) he claims an interest relating to the subject of the action and is so situated that disposition of the action in his absence may (i) as a practical matter impair or impede his ability to protect that interest * * *."

nothing in the new rule or in its attendant commentary to indicate that it effected a change in the kind of interest required.³ Thus the thrust of the revision seems clearly to be concerned with adequacy of representation and not with any notion of expanding the types of interests that will satisfy the rule. Still required for intervention is a direct, substantial legally protectable interest in the proceedings.

The only post-amendment case that touches on the interest question directly is Cascade Natural Gas Corp. v. El Paso Natural Gas Co., 386 U.S. 129 (1967). And there Mr. Justice Douglas did not amplify the majority's views on the matter so as to provide clear guidelines. The position of Cascade, the prospective intervenor, is described at page 133, and amounts to

³The Revisers explain the import of the change in this way:

"* * * A Class member who claims that his 'representative' does not adequately represent him, and is able to establish that proposition with sufficient probability, should be not put to the risk of having a judgment entered in the action which by its terms extends to him, and be obliged to test the validity of the judgment as applied to his interest by a later collateral attack. Rather he should, as a general rule, be entitled to intervene in the action.

"The amendment provides that an applicant is entitled to intervene in an action when his position is comparable to that of a person under Rule 19(a) (2) (i), as amended, unless his interest is already adequately represented in the action by existing parties. The Rule 19(a) (2) (i) criterion imports practical considerations, and the deletion of the 'bound' language similarly frees the rule from undue preoccupation with strict considerations of *res judicata*." Notes of Advisory Committee on Rules, Rule 24, 28 U.S.C.A. (1967 Pocket Part.)

this: Cascade is an Oregon distributor of gas and has been and will be relying as its sole supplier on the Pacific Northwest Company that El Paso acquired and is now having to re-create via divestiture; that is Cascade's "interest." Mr. Justice Douglas also details Cascade's complaint: that the new company is being placed at such a competitive disadvantage by the proposed settlement that the company's economic viability is questionable; and presumably to the extent that Company fares poorly, Cascade's own economic fortunes will be adversely affected. Justice Douglas notes that the new rule "recognizes as a proper element in intervention 'an interest' in the 'transaction which is the subject of the action.' * * * [W]e conclude that the new Rule 24(a)(2) is broad enough to include Cascade * * *." 386 U.S. at 135-136.

The opinion is certainly susceptible of a very broad reading, and Mr. Justice Stewart, in dissent, reads it broadly indeed:

"The Court's standard of 'adequate representation' comes down to this: If, after the existing parties have settled a case or pursued litigation to the end, some volunteer comes along who disagrees with the parties' assessment of the issues or the way they have pursued their respective interests, intervention must be granted to that volunteer as of right. This strange standard is not only unprecedented and unwise, it is also unworkable." 386 U.S. at 155.

But Cascade should not be read as a carte blanche for intervention by anyone at any time. For though Cascade's interest in the decree may have been somewhat remote, it did show a strong, direct economic interest, for the new company would be its sole supplier.

And see Kaplan, Continuing Work of the Civil Committee: 1966 Amendments of the Federal Rules of Civil Procedure (I), 81 Harv. L. Rev. 356, 400-407 (1967).

In addition, the majority opinion reflects its irritation with the Justice Department for "knuckl[ing] under" to El Paso and with the District Court judge for ignoring the Court's mandate. It is, then, little wonder that the Court was extremely charitable with the intervenors.

1. Petitioners' Interests.

a. Parents. Rule 24(c) requires that the motion asking for intervention "shall state the grounds therefor and shall be accompanied by a pleading setting forth the claim or defense for which intervention is sought." Petitioners have not filed a separate pleading, a failure that has been held fatally defective.⁴ And even apart from Rule 24(c), petitioners have an obligation to set forth their interest with clarity, for "motions to intervene should be carefully scrutinized and granted only in cases * * * in which the motion definitely establishes that the petitioner has some interest or right which will not be adequately protected or enforced unless intervention is granted." Societe Internationale, etc., v. McGrath, D. D.C., 90 F.Supp. 1011, 1012 (1950), affirmed, sub nom. Kaufman v. Societe Internationale, 88 U.S.App.D.C. 296, 188 F.2d 1017 (1951), reversed on other grounds, 343 U.S. 156 (1952). Where petitioners seek to intervene after final judgment, specificity may be particularly important.

⁴Miami County Nat. Bank of Paola, Kan. v. Bancroft, 10 Cir., 121 F.2d 921, 926 (1941) (alternative holding) ("The purpose of the rule requiring the motion to state the reasons therefor and accompanying the motion with a pleading setting forth the claim or defense is to enable the court to determine whether the applicant has the right to intervene, and, if not, whether permissive intervention should be granted"); Mullins v. DeSoto Securities Co., W.D. La., 2 F.R.D. 502, 507 (1942) (alternative holding); Lebrecht v. O'Hagan, 96 Ariz. 288, 394 P.2d 216 (1964) (construing state statute identical with Rule 24(c) on post-judgment motion to intervene in quiet title action).

For even if petitioners have a protectable interest in certain aspects of the decision, they may not have standing to challenge the whole of it on appeal. Specificity is required so the court can determine in which parts of its decree the petitioners have such an interest.

Yet neither in their moving papers nor at the three hearings which have been held have the parents alleged how they or their children are affected by this court's decree in Hobson. Nor have they offered any evidence of any kind to demonstrate their interest. They have simply reiterated their position that they are parents of public schoolchildren, that they "dis-sent from" this court's decision, and that their children will be materially affected by its implementation. The only information concerning the parents that has been conveyed to this court is their names and addresses and the fact that two are Negro.⁵ From this the court could determine in what school districts they reside, but not which schools their children attend since the court is not even told whether they are in elementary, junior high or high school. Even if they are affected by parts of the decree and could

⁵ A sense of this inadequacy of the parent-petitioners' allegations can be derived from an examination of their proposed findings of fact and conclusions of law here quoted in full:

"FINDINGS OF FACT

* * *

"7. The following proposed interveners are residents of the District of Columbia as hereinafter set forth and are the parents of children attending the public schools of the District of Columbia.

"(a) Reverend William D. Jackson, residing at 44 58th Street, S.E.

"(b) Margaret G. Carter, residing at 4630 B Street, S.E.

conceivably intervene to challenge those parts on appeal, they may not have an interest in every aspect of it.

The parents seem to rely on the fact that, because Hobson himself had standing as a parent to bring suit against the school board, they, as parents, should be allowed to intervene to carry the suit forward on appeal on behalf of the school board which has not chosen to do so. But in the first place, intervention is concerned with something more than standing to sue: it is concerned with protecting an interest which practically speaking can only be protected through intervention in the current proceeding. That petitioners share a common or identical interest with those who have standing to sue does not answer the question or entitle them to intervene.

Even more important, Hobson's suit was a class

"(c) Katherine McKay Wilkinson, residing at 4308 Forest Lane, N.W.

"(d) Charles Tait Trussell, residing at 4414 Klinge Street, N.W.

"(e) Ernest R. Stevens, residing at 1302 F Street, N.W.

"(f) Robert E. Nelson and Barbara A. Nelson, residing at 1751 Lanier Place, N.W.

"(g) Van H. Seagraves and Eleanor Seagraves, residing at 1813 Shepherd Street, N.W.

"(h) John R. Immer and Marjory J. Immer, residing at 1638 19th Street, N.W.

"(i) William E. Weld, Jr., and Jane Weld, residing at 3911 Argyle Terrace, N.W.

"(j) Richard A. Hendricks and Dawn C. Hendricks, residing at 3833 Windom Place, N.W.

"(k) Reverend and Mrs. Cleveland B. Sparrow, residing at 843 52nd Street, N.E.

action brought in behalf of Negro and poor children and alleging an unconstitutional denial of equal educational opportunities. Here, however, the petitioners seeking to intervene do not purport to represent a class⁶ and have not alleged a denial of any rights, constitutional or otherwise. Again, they simply "dissent from" this court's decision and disagree with the school board's decision not to appeal it.

"Certain of the aforementioned intervening parents are Negro citizens and others are white citizens.

"8. The education of all children attending the public schools of the District of Columbia is or may be affected by the judgment of this Court entered on June 19, 1967, and this is a proper and legal concern of their parents, including the proposed intervening parents. Said proposed intervening parents dissent from and desire appellate review of that judgment.

"9. The * * * proposed intervening parents have an interest in the properties and transactions which are the subject matter of this action. Prior to the judgment of this Court entered on June 19, 1967, the interests of the interveners in said properties and transactions were adequately represented and protected by the defendant, Board of Education; but since said judgment and the announced decision of the Board of Education not to appeal or permit the Superintendent of Schools to appeal therefrom, the interests of the interveners have not been adequately represented by existing parties; and the future disposition of this action, in the absence of an appeal (which no existing parties have noted) would as a practical matter impair or impede the interveners' ability to protect their aforementioned interests.

⁶While in their proposed findings of fact and conclusions of law petitioners do refer to others "similarly situated," they have neither explained how they themselves are situated nor in their moving papers sought to establish the prerequisites of a class action.

b. Dr. Hansen.

Petitioner's attorneys were evidently aware of Rule 24 requirement that the prospective intervenors' interests be delineated with some specificity, for in Dr. Hansen's motion they spell out in detail how he is affected by the Hobson decision and what interests he seeks to protect through appeal.

First Dr. Hansen maintains that the court's judgment and opinion amounted to a personal attack on him, damaging his professional reputation as an educator and school administrator, and that he has a right to intervene to salvage that reputation.

The court emphatically rejects the idea that the opinion and judgment of June 19 amounted to a personal attack on Dr. Hansen. This lawsuit has been and always will be concerned with the public school system and not with any particular individuals within it. Dr. Hansen was Superintendent; he was a party in that capacity; he was a principal witness in that capacity. Nowhere does Dr. Hansen's motion before this court point to any aspect of the opinion to support the allegation of a personal attack. In fact, Dr.

"CONCLUSIONS OF LAW

"1. The right of the proposed interveners to enter this case for the purpose of appeal must be determined as of the time their motions to intervene were filed. At that time no action had been taken to implement the judgment entered by this Court, and any specific effect upon children of the intervening parents and others was wholly prospective; but the future implementation of said judgment could have a material effect upon the children of the intervening parents and other children similarly situated.

"2. The proposed * * * intervening parents are entitled as a matter of right to intervene in this action pursuant to Rule 24(a) of the Federal Rules of Civil Procedure, for the purpose of taking an appeal."

Hansen, being an employee of the Board and subject to its order, need not have been named in the suit at all.

The sole case relied upon by Dr. Hansen, Blassie v. Kroger Company, 8 Cir., 345 F.2d 58 (1965), is readily distinguishable. There a union trustee had been sued as trustee; during the course of the trial he was removed from office by the union, but he continued to participate actively in the litigation. He was found to have an appealable interest,⁷ not simply because of his participation as an individual, but because the judgment and decree operated against him in his individual capacity; that is, he was individually named in the decree and was directed to perform positive acts; failure to comply would have subjected him, individually, to being in contempt of court; and he was, individually, taxed for costs of the trial. Most certainly this is not Dr. Hansen's position. While named in the judgment, as Superintendent, he is not individually subject to the decree; now that he has resigned as Superintendent, he is automatically out of the proceedings. Rule 25(d)(1), Fed. R. Civ. P. The decree has no effect on him whatever—it was rendered against the office, not the man.

Apart from his personal reputation, Dr. Hansen alleges interests related to his status as a resident, citizen and taxpayer in the District of Columbia and as a professional educator and school administrator: (1) As a resident and taxpayer he alleges an interest in the public expense—amount unspecified—involved in compliance with the judgment. (2) As a citizen,

⁷ Though the case was predicated on Rule 74, Fed. R. Civ. P., rather than on Rule 24, the question being whether petitioner had an appealable interest, the relevant considerations under the two rules often coalesce, and the sort of interest giving rise to a right to intervene for purposes of taking an appeal may be much one that required to take an appeal directly.

resident and taxpayer he says he is vitally concerned with the administration of the school system by the Board of Education; that he does not think the judgment, which he believes to be an unlawful judicial invasion into the administration of schools and the formulation of educational policies, should become precedent here or elsewhere; and that the Board's acceptance of the judgment is an abdication of its legal responsibilities. (3) Finally, as a professional educator and administrator he says he has a direct interest in the welfare of all students, their parents and their teachers; that those interests will be adversely affected by the erroneous judgment of this court; and that the judgment will have the effect of driving the races apart by compelling policies based on considerations of race and affluence.

As a taxpayer, Dr. Hansen is just like any other taxpayer in the District of Columbia—ex-Superintendent or not, and as such faces all the obstacles confronting a taxpayer seeking to bring such a suit. See Commonwealth of Massachusetts v. Mellon, 262 U.S. 447 (1923); Jaffe, Standing to Secure Judicial Review; Public Actions, 74 Harv. L. Rev. 1265 (1961). And here the question is not simply one of standing, but one of the right to intervene, where the interest must be more refined, more direct and more substantial. In Blocker v. Board of Education of Manhasset, New York, E.D. N.Y., 229 F.Supp 714 (1964), the parents of several schoolchildren sought, as taxpayers, to intervene for purposes of appealing a decision ordering the school board to desegregate certain schools through a freedom of choice plan. The school board, which had originally fought the suit, decided not to appeal. The case was decided before the change in Rule 24, and Judge Zavatt's decision denying intervention turned in part on the fact that the parents would not be bound by the decision. But the decision also rested on the fact that the effect of the decision on the prospective intervenors' taxes was purely speculative. Here there is no showing that Dr. Hansen's taxes will be increased because of implementation of this court's

decree or, if they will be increased, what portion or portions of the decree will be responsible for it. Additionally, it is not clear that his interest as a taxpayer could not be protected in other ways, e.g., through an injunctive action against the Board to restrain certain expenditures as unlawful. Finally, and most important, Dr. Hansen does not allege any unlawful conduct by the school board which he, as a taxpayer seeks to restrain by appealing. Thus the matter is simply one of disagreement over policies, and suits do not lie simply to carry a disagreement into court, whether in a direction action or through intervention. Indeed, even if Dr. Hansen were affected more directly than he is as a taxpayer, a suit based simply on disagreement with school board policy would not state a justiciable claim.

Finally, as to Dr. Hansen's interest in administration of the school system and in the welfare of the students in it, his interest is no different from any other resident. Again, he does not allege that under the decree the school board will be acting unlawfully, but only that it will be acting unwisely. This is not normally the sort of complaint that can give rise to a lawsuit. A citizenry displeased with its leaders' policies must generally seek redress through the political, not the judicial, process. Here, however, Dr. Hansen can argue that, even if this school board acquiesces in this court's judgment, unless the judgment is appealed subsequent board, which may disagree with it, will nevertheless be bound by it. But political judgments, even though irremediable, nevertheless cannot be challenged in court unless someone's legally protectable rights are infringed. Here Dr. Hansen alleges no such right and the question becomes whether the school board, in deciding not to appeal, is in good faith representing the interests it has been delegated the responsibility to protect. There is no allegation that it is not. Congress has vested "[t]he control of the public schools of the District of Columbia * * *" in the school board.³¹ D.C. Code § 101 (1967). That board has determined that

the interests of the school system will best be served, not by appealing, but by implementing the decree. This decision was reached in open meeting, and petitioners do not argue that it was made in bad faith or in violation of their legal responsibilities. Indeed, the good faith of the Board is conceded. There is said to be inadequate representation only because the Board has decided not to appeal. Thus what the issue boils down to, in petitioners' own terms, is whether they should be allowed to appeal because in their judgment an appeal is warranted.

But the interest which must be established under Rule 24 is not—as petitioners sometimes seem to suggest it is—whether petitioners have a constitutional right to appeal. The assertion that they do have such a right is without substance in law or logic, for the very question is whether they have an interest which indeed does entitle them to appeal. To say that they come into this court with the pre-existing right, for which intervention must be granted as a sort of procedural pathway to the Court of Appeals, totally begs the question. And, as we have seen, the parent petitioners have not shown what their interests are, while Dr. Hansen's interests do not seem sufficient to establish a right to intervene, nor are they of the sort protectable by the judiciary.⁸

⁸ As indicated, intervention after final judgment has been rare, and the major cases allowing it are distinguishable as to the interests which the intervenors sought to protect by appealing.

In Wolpe v. Poretsky, 79 U.S. App. D.C. 141, 144 F.2d 505, cert. denied, 323 U.S. 777 (1944), for instance, the question was whether neighboring property owners could intervene to appeal the District Court's ruling that the Zoning Commission of the District of Columbia had acted arbitrarily and capriciously in prohibiting the building of an apartment house in a residential area; the Commission decided

not to appeal, and the property owners were confronted with the prospect of having an apartment house raised in their midst. But there the petitioners' interest was established by statute: 5 D.C. Code §422 (1967) gives neighboring property owners a private right of action to enjoin building and construction that violates the zoning laws. "The interest of individual property owners in protecting the 'stability of districts and of land values therein' is expressly recognized by Section 5-422 of the Code. * * * Their right to bring that independent action is the basis of appellants' right to intervene in this case." 79 U.S. App. D.C. at 143, 144 F.2d at 507.

In Pellegrino v. Nesbit, 9 Cir., 203 F.2d 463 (1953), petitioner was a stockholder seeking to intervene to appeal an action brought under § 16(b) of the Securities Exchange Act to recover profits made by the corporation's officers through allegedly unlawful insider (short-swing) dealings. The District Court has found in favor of the officers and the corporation had decided not to appeal. Though there is some broad dictum, the decision was narrowly framed, being based as much on § 16(b) as on Rule 24. "Section 16(b) establishes a statutory policy intended to prevent the abusive practices which were found to result from short-swing insider trading of securities, practices which are harmful both to the other stockholders and to the general public. * * * To the extent the statute is intended to protect the public from market fluctuations intentionally caused by or within the prior knowledge of corporate insiders seeking short-swing profits, the plaintiff in a § 16(b) suit is merely an instrument for effectuating the statutory policy. * * * In view of the statutory policy involved we need not be concerned with either the substantiality of appellant's shareholder interest * * * or appellant's motive in seeking to take part in the litigation." 203 F.2d at 466. (Emphasis added.) And see Alleghany Corporation v. Kirby, 2 Cir., 344 F.2d 571 (1965), cert. dismissed as improvidently granted, 384 U.S. 28 (1966),

2. Petitioners' Situation.

The question of whether petitioners are so situated that the disposition of the action "may as a practical matter impair or impede [their] ability to protect that interest" is intimately related to the question of what the interest sought to be protected is. The second cannot be answered without reference to the first. Because the parents have not explained what their interests are, we cannot assess whether they are so situated that intervention is necessary to protect them.

discussed in text infra. Here, of course, petitioners have no comparable statutory rights.

In American Brake Shoe & Foundry Co. v. Interborough Rapid Transit Co., S.D.N.Y., 3 F.R.D. 162 (1942), the court did not focus directly on the question of interest, but the interest was obvious. Petitioners were bondholders objecting to a corporate reorganization which they contested because they did not consider the plan compensated them adequately. The bondholder-attorney who had been representing his own and their interests decided to settle his claim and abandon the appeal; petitioners were allowed to intervene to continue it in their own behalf.

Finally, in Zuber v. Allen, D.C. Cir., No. 20,931 (July 5, 1967), where the Court of Appeals just recently allowed intervention to take an appeal, the interest of petitioners is direct and substantial. They are dairy farmers receiving differential payments pursuant to a regulation promulgated by the Secretary of Agriculture. See generally Blair v. Freeman, 125 U.S. App. D.C. 207, 370 F.2d 229 (1966). Plaintiffs in the action are non-receiptant farmers challenging the authority of the Secretary to make such payments; they have been granted summary judgment. Intervenors have to date had \$675,000 withheld from their monthly allotments because of the action, so their direct pecuniary interest is undeniable.

Dr. Hansen, on the other hand, has spelled out his interests and if they are interests which should be protected by a court at all, he is so situated that he should be permitted to intervene. But as indicated, this court seriously doubts that he has shown any legally protectable interests.

3. Adequate Representation.

Petitioners contend that they are being inadequately represented by the school board simply because that board has voted not to appeal this court's decree. Yet the only reason they give for seeking to appeal it is that the "dissent" from it. They concede that the school board has acted in good faith in choosing not to appeal and, as indicated, it is the Board that is vested with the statutory authority to shape and administer school policy. While petitioners may disagree with the Board's policy-making, they do not allege that the Board has abused or acted beyond its statutory authority.

In Blocker v. Board of Education of Manhasset, New York, supra, decided before the 1966 change in Rule 24, the decision went off on the ground that the parents were not legally bound. Nonetheless, Judge Zavatt's comments on adequacy of representation are still highly relevant, for that part of the rule has not been amended. After citing a passage from his earlier judgment to the effect that the board, not the electorate, has the responsibility for school attendance policies, a responsibility that the board until that time had not lived up to, he said:

"Now that the Board has recognized this fact and decided not to appeal, some electors of the community have asked this court to appraise the soundness and propriety of that decision by finding that the petitioners may not be represented adequately by the Board. The issue is simply one of disagreement between the proposed intervenors and the Board; no allegation is made that the Board has been

negligent or guilty of bad faith in reaching its determination. The Supreme Court, in a closely analogous situation, has warned us of the danger inherent in such a judicial appraisal: * * * *Sam Fox Publishing Co. v. United States*, 366 U.S. 683, 698 * * * (1961). As one commentator has put it. '[r]epresentation by the governmental authorities is considered adequate in the absence of gross negligence or bad faith on their part.' 4 Moore, *Federal practice* § 24.08, at 43 (2d ed. 1963). The court need not, however, pass upon the adequacy of the representation afforded the proposed intervenors by the defendant School Board. * * *" 229 F.Supp. at 715.

And in *Alleghany Corporation v. Kirby*, 2 Cir., 344 F.2d 571 (1966), cert. dismissed as improvidently granted, 384 U.S. 28 (1966), two minor stockholders moved for and were denied intervention for purposes of applying to the Supreme Court for a writ of certiorari, the Board of Directors having voted after due deliberation not to seek certiorari. The Second Circuit affirmed, Judge Kaufman holding:

"We fully agree with the District Court's conclusion that, on the record before it, the decision of the independent members of the Board of Directors not to apply for certiorari, after consultation with independent counsel and full presentation and consideration of relevant business and legal implications, did not result in 'inadequate representation as a matter of law.' We know of no proposition of law that permits shareholders, absent any allegations of bad faith, collusion or negligence, concededly neither present nor charged here, cf. *Sam Fox Publishing Co.* * * *, to intervene, as of right, in order to continue litigation that independent members of the Board of Directors, acting in good faith and in the exercise of sound business judgment, have decided to terminate. * * *

* * *

"Adequacy of representation, at least in the context of this case, depends not on our assessment of whether the Board should have authorized a certiorari petition, but rather on whether shareholder interests were fully and fairly considered when the Board reached its decision. Stated somewhat differently, the mere fact that a particular decision is adverse to certain interests does not necessarily mean those interests were not adequately represented in the decision-making process or in the decision itself." 344 F.2d at 573-574.

While the requirement of negligence or bad faith is not always a prerequisite to intervention for purposes of taking an appeal, those cases which have allowed such intervention without that showing are generally distinguishable from the instant case with respect to the question of adequacy of representation as well as that of interest.⁹ Consequently, while it may not

⁹In *Wolpe v. Poretsky*, *supra* Note 8, the court noted that, although the zoning order subsequently invalidated by the District Court had been adopted by the Zoning Commission after a public hearing, the decision not to appeal was made in a non-public executive session. While the court did not rely on this, it thought the matter relevant to whether the property owners were being adequately represented — in court and elsewhere. In turning to the specific question of adequacy, Judge Arnold prefaced his discussion by stating that "[w]e do not go so far as to hold that adequate representation requires an appeal in every case." 79 U.S. App. D.C. at 143, 144 F.2d at 507. He then went on to note the following circumstances: An administrative body (Zoning Commission) had been found to have acted arbitrarily and capriciously in the face of a strong presumption that it had properly performed its duties; some of the District Court's reasons were more pertinent as

arguments to influence the judgment of the Commission in balancing various zoning interest than as legal arguments to support the ruling; thus, although eschewing any intent to pass on the merits of the decision, Judge Arnold observed that there was enough on the record to show that refusing to appeal the decision was not adequate representation.

In sum, Wolpe is a case where a body charged with protecting property interests had been overruled by what appeared as a questionable court decision; that body had, without public discussion, decided not to appeal; the effect of that decision was to wipe out adjoining property owners' statutory right to enjoin unlawful construction.

In Pelligrino v. Nesbit, *supra* Note 8, the adequacy of representation holding was tied in to § 16(b)'s requirement of diligent prosecution: "Appellant was entitled to intervene, as a matter of right, in accordance with the provisions of § 16(b) if appellee corporation has failed 'diligently to prosecute' the suits it instituted to recover the short-swing profits of its officers." 203 F.2d at 466. The court then went on to make two points relevant here. First, in response to the corporation's argument that a board of directors may, subject to the exercise of good faith and sound business judgment, determine whether it is in the corporate interest to appeal, the court held that § 16(b) imposes a limitation on the normal discretion of the directors. This was based on the argument that if directors — who are most likely not too anxious to sue corporate officers anyway — could terminate litigation after judgment, then the policy of § 16(b) would be frustrated. Second, the court followed the Wolpe approach regarding the merits of the trial's court's decision: "Although diligent prosecution may not require an appeal in every case where a trial court enters judgment for the defendant [officers], stockholder intervention for the purpose of perfecting an appeal from such a judgment should be liberally granted where the judgment of the trial court

raises substantial and important questions of law in relation to its correctness. * * * Such questions are presented by the judgments on the merits in the instant case." 203 F.2d at 467. After discussing three major aspects of the trial court's holding, noting inter alia that the S.E.C. had filed an amicus brief against the judgment and that the judgment seemed to be in conflict with Supreme Court precedent, the court concluded: "We have discussed the judgments of the District Court on the merits only to the extent thought necessary to show that the corporation's decision not to appeal * * * constituted a failure diligently to prosecute the suits since the correctness of the judgments presented substantial and important questions of law." 203 F.2d at 468.

Pellegrino, then, is a case in which the court was acting to implement a specific statute — § 16(b) — which was designed to protect both stockholders and the public interest against collusive corporate activity. That statute not only confers a special status on the individual stockholder, the intervenor, but it limits the normal discretion of the representative entity, the board of directors. And see Nedick's Stores, Inc. v. Genis, S.D.N.Y., 34 F.R.D. 235 (1963); Molybdenum Corp. of America v. International Mining Corp., S.D.N.Y., 32 F.R.D. (1963), both noting § 16(b)'s liberalizing influence on Rule 24. No such statute limits the school board's discretion in deciding whether to appeal Hobson.

The broad dictum in Pellegrino to the effect that intervention should be allowed even after a final judgment where it is necessary to preserve some right which cannot otherwise be protected, and that such a right which cannot otherwise be protected than by intervention is the right to appeal from the judgments entered on the merits by the District Court, simply begs the question. One does not have a right to appeal in the abstract, but only if he establishes such an interest that he should be allowed to intervene to appeal to protect his interest. One does not have the

be decisive that the statutorily designated representative of petitioners' interest has chosen at open meeting and concededly in good faith not to appeal, Atlantic Refining Company v. Standard Oil Company, 113 U.S.App.D.C. 20, 304 F.2d 387 (1962); Zuber v. Allen D.C.Cir., No. 20,931 (July 5, 1967), it does place squarely on the petitioners the obligation to demonstrate and specify a substantial interest which they can only protect through intervention. This the petitioners have not done. Nevertheless, in order to give the Court of Appeals an opportunity to pass on the intervention questions raised here, and the questions to be raised by the appeal on the merits if it finds the intervention was properly allowed, this court grants the motions to intervene.¹⁰

right to appeal unless he can establish that his interest is not adequately represented by the decision not to appeal.

American Brake Shoe & Foundry Co. v. Interborough Rapid Transit Co., supra Note 8, is an obvious case of inadequate representation, the attorney's individual decision being nothing more than a personal judgment that he did not wish to continue the litigation; he did not even purport to be making a representative decision in abandoning the appeal.

Zubert v. Allen, supra Note 8, seemingly extends Wolpe and Pellegrino by allowing intervention where it only "appeared" that an appeal was not going to be taken. Being an order, there is of course no discussion of the rationale of the decision. However, it is not precedent for automatically allowing intervention whenever an appeal is not taken, for the interests in Zuber were clearly established and the Secretary of Agriculture had at trial conceded that he did not represent individual interests but rather the larger public interest.

¹⁰ Petitioners have not sought permissive intervention pursuant to Rule 24(b) presumably because that section of Rule 24 seems inappropriate where inter-

/s/ J. Skelly Wright
United States Circuit Judge

Washington D.C.
February 19, 1968

[Filed April 12, 1968]

STATEMENT OF POINTS ON APPEAL
OF INTERVENORS (NOW APPELLANTS)

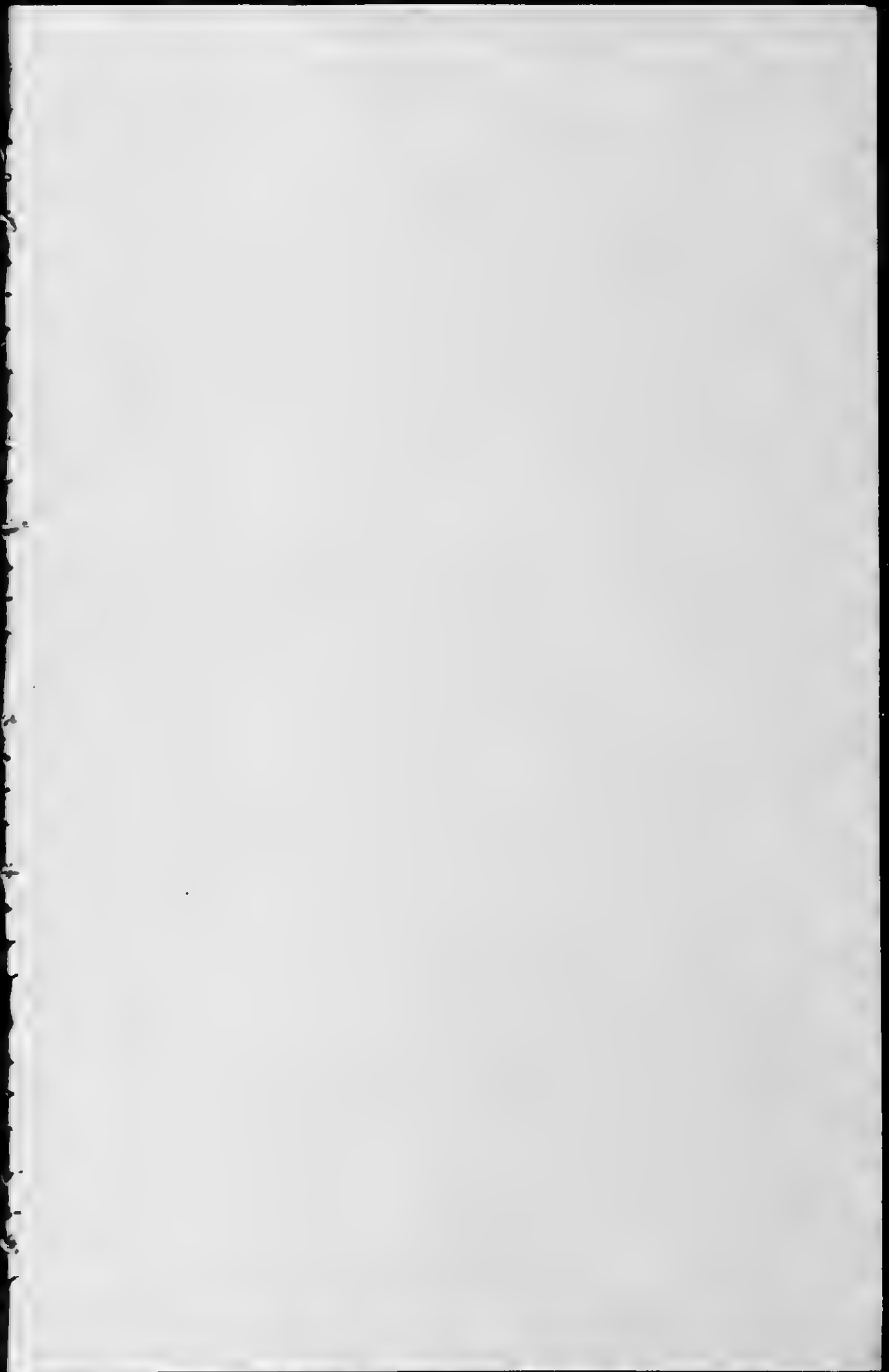
The Appellants, Carl F. Hansen, individually, and the Reverend William D. Jackson, et al., heretofore petitioners for intervention, by their counsel, hereby adopt the Statement of Points on Appeal heretofore filed by the other Appellants, as set forth in the statement of such points of Carl C. Smuck, Appellant, as their own Statement of Points on this Appeal.

Respectfully submitted,

/s/ Thomas S. Jackson
Attorney for Appellants

[Certificate of Service]

vention is sought for purposes of appealing a decision which the party to the main action has decided not to appeal. Apart from intervention pursuant to a statute conferring a conditional right to intervene, Rule 24(b) permits intervention only when "an applicant's claim or defense and the main action have a question of law or fact in common." The rule, then, contemplates adding additional parties to an existing controversy, and does not contemplate intervention to permit a new party to carry forward issues which the parties to the main action have chosen not to contest on appeal.



APPELLANTS' APPENDIX

**IN THE
UNITED STATES COURT OF APPEALS
FOR THE DISTRICT OF COLUMBIA CIRCUIT**

No. 21,167

CARL C. SMUCK
a Member of the Board of Education
of the District of Columbia,
Appellant

v.

JULIUS W. HOBSON, et al.,
Appellees.

No. 21,168

CARL F. HANSEN,
Superintendent of Schools of the
District of Columbia,
Appellant,

v.

JULIUS W. HOBSON, et al.,
Appellees.

**APPEALS FROM THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA**

United States Court of Appeals
for the District of Columbia Circuit

FILED JUN 11 1968

VOLUME II

Nathan J. Paulson
CLERK

(i)

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UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

-----X	
JULIUS HOBSON, et al,	:
	:
Plaintiff,	:
	:
vs	:
	:
CARL F. HANSEN, et al,	:
	:
Defendants	:
	:
-----X	

Civil Action No. 82-66

Washington, D. C.

Monday, July 18, 1966

The above-entitled case came on for hearing at 10 o'clock a.m., in the United States District Court for the District of Columbia, in the Courthouse at Washington, D. C.

BEFORE

HONORABLE J. SKELLY WRIGHT,

United States Circuit Judge,

sitting by designation.

APPEARANCES:

WILLIAM M. KENSTLER, Esquire,
JERRY D. ANCHOR, Esquire

On behalf of Plaintiff Julius Hobson , et al.

ROBERT R. REDMON, Esquire,
JOHN A. EARNEST, Esquire,
JAMES M. CASHMAN, Esquire,
MATTHEW J. MULLANEY, Esquire,
Assistant Corporation Counsel, District of Columbia
On behalf of Defendant, Carl F. Hansen, et al.

THE COURT: Well, your in the middle of the trial of a case now and I don't want to burden either side with a memorandum at the present time, but will have to have a memorandum before I rule on them. Perhaps it will become necessary to use some of these documents in connection with the witnesses and maybe it might be necessary for them to be in evidence for this purpose. On the other hand, it may not be necessary for them to be in evidence. So you have to make up your own mind when you want a ruling on this. But in any event, the fact they are not in evidence doesn't preclude their use in connection with witnesses.

MR. KUNSTLER: Your Honor, we have no other general offers at this time and we would like to call Dr. Hansen. Thereupon,

[CARL F. HANSEN]

was called to the witness stand, and, having been first duly sworn, was examined and testified as follows:

[DIRECT EXAMINATION]

BY MR. KUNSTLER: [

THE MARSHAL: Are there any witnesses in the courtroom who intend to testify in this case? Any witnesses? Step this way, please.

MR. KUNSTLER: That is Dr. Trudy Justison. She just came into the courtroom. She is one of our experts.

MR. REDMON: I have no objection to experts being in court, Your Honor.

THE COURT: Bring her back. I assume the Doctor knows Dr. Hansen will be on the stand for sometime?

MR. KUNSTLER: She knows, Your Honor. Shall I begin, Your Honor?

THE COURT: Go right ahead.

BY MR. KUNSTLER:

Q Doctor, will you state your name?

A Carl F. Hansen.

Q Would you state your present occupation?

A Superintendent of the District of Columbia Schools.

Q Dr. Hansen, where were you born?

A I was born in Wolboch, Nebraska.

Q Where did you go to college?

A University of Nebraska, University of Southern California, University of Wisconsin.

Q Did you receive a degree from the University of Nebraska?

A I did.

Q What was that degree?

A Bachelor of Arts degree.

Q Then you went to the University of Southern California?

A No, I completed my Masters Degree in Nebraska.

Q What was your field?

A My field was undergraduate level English, political science and Latin, education, courses taken as necessary to meet the requirements for a teaching certificate in Nebraska. In the Masters degree level, major in education, minor in English; doctorate level, doctor of education, University of Southern California; major in education, minor in comparative literature.

Q When did you receive your Doctor of Philosophy?

A 1954.

Q 1954?

A Pardon me. 1944.

Q Were you associated prior to 1944 with any school system?

A I was.

Q What school system was that?

A You want me to specify the first association?

Q Yes, I would like you to specify the years and association.

A I began teaching in my home town high school in the year 1925-26; then I went back and finished my degree; taught English and Latin there. Then in 1927 I went to Grand Island, Nebraska, where I taught English and coached the debating. I went from there to a year with the Works Progress Administration as personnel assistant; In 1935-36, I believe, took a year's leave of absence from that position in Grand Island; after that year I went to Omaha, Nebraska to Technical High School where I taught English, journalism, guidance; then became Head of the Language Arts Department in that school; and then subsequent to that time on the retirement of the principal, I was named principal of Technical High School. This was a comprehensive high school, I might point out, with pupils from all over the city, representing all levels of needs and responsibilities and abilities, with an enrollment ranging up to 4,000. At the time I was principal we had an enrollment of 2600. I make this point because much I learned from the pupils acquired in this particular setting.

Then I was invited to come to Washington. The Superintendent of Schools then invited me to come as his Executive Assistant in 1947. After six months I was placed

in charge of the elementary schools --the White elementary schools, and the curriculum planning of the total school system. In 1955 after the reorganization of the staff following desegregation in 1954, I was placed in charge of senior high schools as they were unified, brought under one head. In 1958 I was appointed Superintendent of Schools.

Q Which is your present position?

A Which is my present position.

Q Now, at the time you first came to Washington schools, as you testified you came at the request of the Superintendent to become his Executive Assistant?

A By invitation and supported by the Board of Education.

Q When did you become associate superintendent in charge of the White elementary schools?

A In August 1947. I came in March, with a lapse of about six months.

Q You were in charge of White elementary schools in the Supreme Court decision in *Bolling v Sharp*?

A That is correct.

Q You are familiar with that decision?

A Very much so.

Q Did you testify in that case --*Bolling v Sharpe*?

A Before the Supreme Court?

Q Not before the Supreme Court, before the trial court?

A No.

Q You were not consulted on the case?

A I was not consulted. Let me correct that statement.

I participated in depositions of various kinds developed by the attorneys for the plaintiff, and in that way I was a participant, but I was not actually a witness before the Court.

Q The fact you participated in several depositions did you not?

A That is correct.

Q You are familiar with the ruling in Bolling v Sharp, are you not?

A Yes, sir.

Q You read the decision?

A Yes, sir.

Q That decision was on May 17, 1954, is that correct?

A Yes, sir

Q Up to that time, is it not true that the schools in the District of Columbia were headed by one superintendent but broken down into two divisions?

A That is correct.

Q Was Division One the white division?

A That is right.

Q Division Two was the Negro division?

A That is right.

Q Your contact up to that decision of *Bolling v Sharpe* was with the White Division only?

A That is not correct.

Q Did you have contact with the Negro Division?

A Extensive contact. May I remind you I was in charge of curriculum development for the total school system.

Q But your primary responsibility, as I understand, was Associate Superintendent in charge of White elementary schools, is that correct?

A I had an equal responsibility for both.

Q You prepared the curriculum for both White and Negro?

A I directed the preparation.

Q Now, prior to the Supreme Court decision of *Bolling v Sharpe*, did you in any way take issue with segregation of pupils by race in the District? Did you write papers, for example?

A I participated extensively --

Q --answer my question, did you take issue?

MR. REDMON: I object to that, Your Honor. There was a statute on the books which required separation of Whites and Negroes in schools. Whether he objected or not, he was bound by the dictates of Congress. The question should be stricken.

THE COURT: What is the purpose of going into this background?

MR. KUNSTLER: Your Honor, we would very much like to find out what this witnesses attitude is toward segregation of races, toward relative merits of White and Negro. I was going to ask him the question whether he took physical action to protest. I am not asking whether he advocated to violate the law, but whether he, as a person, done anything in the school system to indicate there was something wrong educationally, as an educator, with reference to the separation of White and Negro pupils.

THE COURT: The Court will sustain the objection.

BY MR. KUNSTLER:

Q Dr. Hansen, there came a time, of course after *Bolling v Sharpe*, when the two divisions ended, is that correct?

A That is correct.

Q At the present time there is one school system?

A That is correct.

Q Now, do you recall when you were questioned whether you were available as superintendent of schools during this period of time before your appointment, whether any other persons were interviewed with reference to that position?

A Which position?

Q Superintendent of Schools in 1958, I believe?

A My information is the School Board made an extensive country-wide search for candidates. While I am not informed as to the number or the names of candidates interviewed, I am sure many were, or several at least.

Q You know of your own knowledge the identity of any of those persons?

A I know from newspaper accounts the identity of one.

Q Is he Negro or White?

A You are speaking now of the appointment of 1958?

MR. REDMON: I object to that questioning, Your Honor. What relevancy does it have with the Board of Education of 1958 appointing Dr. Hansen or what knowledge he has concerning who else was a candidate for the position.

THE COURT: It does seem we are going far afield.

MR. KUNSTLER: One of our claims, Your Honor, is that there is unfair distribution of top administrative supervisory positions in the school system between Negro and White, and I was going to try to develop this with Dr. Hansen.

THE COURT: Suppose you proceed.

BY MR. KUNSTLER:

Q Dr. Hansen, in your experience with the school system from the Washington, D. C. school system from 1947 to date, the Superintendent of Schools has always been a White person, is that correct?

A That is correct.

Q Now, Dr. Hansen, with reference to the supervisory personnel in the Washington, D. C. school system, I understand that you divided them into classes, is that correct?

A By classes you mean what?

Q Well, I am using the term, I think, the school administration uses. You are in Class 1, is that correct?

A Administratively and in terms of salaries there are several levels running from 1 to 15 on the pay scale, labeled classes 1 thru 15.

Q Dr. Hansen, the Superintendent of Schools, as I understand, is the only one in Class 1, is that correct?

A That is correct.

Q At this moment that is yourself?

A That is correct.

Q You have testified that person, to your knowledge, from 1949 to your knowledge has always been a White person?

A That is correct.

Q Now, Class 2 would be who?

A The Deputy Superintendent.

Q That is the ~~filled~~now by Dr. Joseph Carroll?

A That is not correct.

Q Who is the Deputy Superintendent?

A Mr. John Ricks.

Q Is that person White or Colored?

A That person is White.

Q Has that position ever been filled within your knowledge, since the dual system ended, by a Negro person?

A This particular position, no, but there were organized after 1954, I believe, three deputy positions. After I became Superintendent I assisted in the reorganization to establish a more coherent pattern of responsibility from the Superintendent to the Deputy and to the Assistant Superintendents. The answer therefor was that between 1955 roughly,

THE COURT: It does seem we are going far afield.

MR. KUNSTLER: One of our claims, Your Honor, is that there is unfair distribution of top administrative supervisory positions in the school system between Negro and White, and I was going to try to develop this with Dr. Hansen.

THE COURT: Suppose you proceed.

BY MR. KUNSTLER:

Q Dr. Hansen, in your experience with the school system from the Washington, D. C. school system from 1947 to date, the Superintendent of Schools has always been a White person, is that correct?

A That is correct.

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and I should suppose approximately 1959, shortly after I took over, there were at one time as many as three deputy superintendents.

Q At present there is only one?

A That is correct.

Q Were those three White or Negro?

A One of them was Negro, two were White.

Q Now, as I understand, Mr. Ricks' duties, he is in charge of management and supervision, is that correct?

A That is correct.

Q Would you call that a policy making position?

A I wouldn't. May I make an adjustment there? He contributes to policy making decisions.

Q He is the No. 2 man in the system?

A He is the No. 2 man.

Q Now, we come to Class 3. Who fills Class 3?

A These are the Assistant Superintendents and the President of the Teachers College.

Q Now, as I understand it, there are, and correct me if I am wrong, ten Assistant Superintendents, is that correct?

A That is correct.

Q And without going into the names for the moment, do you know how many of the ten are White?

A I am using the figure 12, which includes the Deputy, because considering the question you are getting to, you might want to include 12 of us.

A Takes Classes 1, 2 and 3 and includes also the President of the Teachers College for the moment?

A Correct.

Q How many people?

A 12. Of the 12 eight are White.

Q That should make 13 wouldn't it?

A No, 12.

Q Yourself and Mr. Ricks is two, you have 10 members, assistant superintendents and the President of the Teachers College?

A It would include the Teachers College President.

Q Just to refresh your recollection, I ask you if you are familiar with this particular document? (Hands Dr. Hansen document.)

A Yes, I am.

Q Does that refresh your recollection?

A I am corrected, it is 13.

Q Now, of those 13, what is the racial composition?

A Four are Negro, and Nine are White.

Q Now, the four Negroes, as I understand it are the following: and you can correct me if I am wrong -- would Mr. Woodson be one of them?

A Yes, sir.

Q What is his position?

A He is in charge of buildings and grounds -- an Assistant Superintendent.

Q Is Mrs. Davis another?

A That is correct.

Q What is her position?

A She is Assistant Superintendent in charge of Pupil Personnel Services.

Q Can I ask you a question about either one of those? Are they both permanent?

A They are both permanent.

Q Now, there are two more Negroes?

A Correct.

Q Mr. Nickens is one? (phonetic spelling)

A Yes, sir.

Q What is his position?

A He is Superintendent in Charge of the Model School Division.

Q Permanent or temporary?

A Temporary.

Q Who is the fourth Negro?

A Mr. Benjamin Handley (phonetic spelling), Assistant Superintendent in charge of Urban Service Corps.

Q Is he permanent or temporary?

A The position is temporary. He is permanent in the school system. And Mr. Nickens is permanent in the school system.

Q I am only talking about the position -- both temporary?

A I am making it clear the position is temporary.

Q Do you know how many of the White persons are temporary or permanent?

A The positions they occupy are all permanent.

Q Dr. Hansen, coming down to Class 4. Do you know who is included within that class -- not names, but positions?

A You are asking me to remember a great deal. I believe the Dean of the Teachers College is in this class. I

believe the Director of Curriculum is in this class. I should like to have the privilege of checking these facts.

Q Then you have also, according to your list, the Executive Assistant to yourself?

A That is correct.

Q Your Executive Assistant is Charles Lofton, is that correct?

A That is correct.

Q He is a Negro?

A That is correct.

Q Who is the Director of Curriculum?

A Mrs. Laverne Walker.

Q She is a White person?

A That is correct.

Q Who is the Dean of the Teachers College?

A Dr. Matthew Whitehead.

Q Is he a Negro or White?

A He is a Negro.

Q Now, just under Class 4 you have Class 5, and you know who the positions are under Class 5?

THE COURT: You have the list there?

MR. KUNSTLER: I have the list. Might as well let him utilize it. May we have it marked for identification, Your Honor.

THE COURT: Is it not marked?

MR. KUNSTLER: It is marked in our list.

THE COURT: That is the mark I want to use.

MR. KUNSTLER: K3, Your Honor.

THE COURT: All right.

(Mr. Kunstler hands Dr. Hansen document.)

A Class 5, there are four positions: Executive Assistant to the Deputy Superintendent, Chief Examiner, the Director of Adult and Industrial Education, and the Director of Food Services.

Q Are they White or Negro?

A These are White.

Q Now, you have gone through Class 5, Dr. Hansen, can you indicate for the record which of those positions in Class 5 you would call positions of policy responsibility?

A I would say all of them contribute to policy making just as we go into other levels we will say all contribute. We operate in this way, Mr. Counselor, that before we arrive at any major policy decision we meet with the staff, exchange

ideas about policy, listen to points of view in respect to proposals either coming from my office or staff offices, so that it is very hard to say only down through Class 5 people participate in policy making decisions. There are occasions when principals are involved deeply in policy making decisions and sometimes teachers contribute to policy making decisions. For example, the Superintendent's Advisory Council, made up of staff people from throughout the city who meet once a month; these people make valid contributions to policy decisions. So my position is we don't identify any particular person as a policy maker for policies in the District schools.

Q For example, you would not consult the Superintendent for Buildings and Grounds with reference to curriculum, would you?

A He attends the staff meetings when we make proposals for curriculum approvals. We meet as a staff but he would not be specifically involved, you are quite right, in determining what should be the content, we'll say, of the trigonometry group. But he will be involved in policy making because construction, planning, equipping of buildings comes out of the curriculum operation. He participates, in fact, he directs committees that prepare standards.

Q That is buildings and grounds, is that right?

A That is correct.

Q But as it relates to his particular function?

A His function being to provide space consistent with curriculum development. My point is, however, he has a strong hand even in this matter. I try to make it clear to you, sir, we do not operate in closed pockets of responsibility. There is an interaction and interrelationship.

Q I am not suggesting that, Doctor, I am indicating the formulation of the curriculum for the various tracks, for example, your primary policy will be made by you and your assistants in conjunction with the person, the particular assistant superintendent who had charge of curriculum, isn't that so?

A I reverse the order, the recommendations, the studies, the proposals, originate with curriculum committees organized under the Department of Curriculum.

A.

Q That is correct, /These committees consist of teachers, of supervising directors who are responsible for subject fields, consist of other consultants, other members of the staff who work in the preparation of curriculum materials. This is all done, sir, before it reaches my office.

Q I realize that, but the Assistant Superintendent in charge of Curriculum, for example, would assist, I understand it, report to you through the Deputy Superintendent, isn't that correct? Isn't that the way the chain runs?

A That is correct.

Q The primary responsibility for curriculum would be the Superintendent in charge of curriculum?

A I don't want to quibble again, I want to say the Director of Curriculum doesn't formulate the curriculum, Mrs. Walker doesn't write curriculum, this is done by staff people in the field -- teachers.

Q Dr. Hansen, I am showing you a chart called Organization Chart for the District of Columbia Schools - 1955, and ask you to look at that and tell us whether the lines of command --we can use that term-- run the same today as they exist on that chart?

A They do.

MR. REDMON: If Your Honor please, if Mr. Kunstler can give us the numbers of these documents, we can follow the testimony.

THE COURT: The purpose of having this list of numbers on the documents is so we can follow .

MR. KUNSTLER: I am going to give the numbers.

Q That is dated November 1965?

A That is correct.

MR. KUSTLER: I would like to offer that.

THE COURT: It may be.

(Mr. Kustler hands document to Mr. Redmon.)

(Plaintiffs' Exhibit K-8 was
admitted into evidence.)

BY MR. KUNSTLER:

Q Dr. Hansen, coming down to the question of teaching personnel, and getting to the question first of all of temporary teachers as against permanent teachers, could you state for the record what the classification "temporary teachers" means as far as the District of Columbia is concerned?

A The "temporary teacher" is one who may be occupying a position which is of a temporary nature. This could happen with a temporary teacher being qualified on a permanent appointment or possibly beyond permanent status for us.

Q Group 1 would be teachers who are occupying what is called temporary positions, you create a class for severely retarded children for a year's experiment --

A Or funds come from temporary sources, that is, seems to be at the moment indefinite, such as ES/EA funds.

Blank

The second category is the teacher who will be placed in a permanent position temporarily vacated by a teacher on leave of absence. These are the smaller percentages obviously, of temporary personnel.

Q Before you get to the third, what would you say the percentage of the first group is?

A I haven't gotten that information together. It is a very small percent.

Q Less than 5%?

A Of the total?

Q Of the total?

A I would not like to guess. We have added a very large number of temporary positions in the last two years -- a figure something like (360).

Q How many teachers in the total system of all kinds?

A You mean all people under the Teacher Salary Act, including Superintendent?

Q I am interested in teachers in the classroom?

A 6100.

Q You say some (330) or so?

A , am using that figure that comes to mind under the new funds. So this may be a fairly sizeable number. But

in proportion to the total number of about 2600 temporary teachers probably relatively small.

Q Now, the second group, how many are there in that second group?

A There again, I would suppose perhaps no more than a 100. people are on leave of absence at any one time which would count another hundred, possibly total 450 or so of the 2600 who have to be temporary because of conditions.

Q Now, we come to the third group which I imagine is that 2000 or so?

A This is the large group, this is a group of teachers who have not yet had requirements for admission to probationary status for a number of reasons, anyone of which might be prevailing in the case of the individual teacher. The most common case would be the teacher has not taken the written examination necessary for probationary appointment.

Q is that the National Teacher's Examination?

A We use the National Teacher's Examination and all but a number of small categories where the National Teacher Examination is not available, say for example, home economics.

Q Before we leave the National Teacher Examination, that is a standard examination is it not for testing of probationary teachers, teachers applying to school systems?

A That is correct, used by cities all over the country.

Q It is taken once, is it not, by a teacher coming into a system?

A If she succeeds getting what we consider a passing score, that is, a score which is within the 66 top percent, she doesn't have to take it again.

Q That is a score, would it not have to be 550 or better?

A Correct. There are other teachers who have not had an opportunity to take the examination but otherwise qualify. They must wait until that examination is given and they come in in October, have to wait till January, February, March to take the examination.

The third category would be the teacher who may lack certain explicit courses. For example, may have less than the required 24 -- I am talking past history, Mr. Counselor, I want to make it clear because there has been a revision in requirements effective last July 1-- 24 hours, say education in elementary school program, where you have 20, may have to make up 4 . Then there is a category of teachers come in for 2 or 3 years of time, come in with with their husbands while the husbands are here on duty, assigned, do not care to

take the examinations necessary to become probationary because these have no real meaning for them. There is a small percentage, I don't know how many in this category. This explains teachers who have completed --who have a record of successful teaching, come in on probationary status.

Now, should I not tell you there has been a redoing of personnel practices program on the Board of Education, is this the time to discuss this?

Q What was the date?

A July 1 of this year.

Q Prior to getting to that, I would like to ask you one or two more questions about temporary teachers. Do all temporary teachers in the District teaching in the elementary schools have Bachelor degrees?

A They do. Now, pardon me. In the elementary schools all but 156 have Bachelor degrees. No one has been appointed to a temporary position in the last 3 to 4 years and I want to make a range there because it may be inaccurate, who does not bring in Bachelor degrees. This is a minimum requirement. Non-temporary teachers who remain in school system without a degree are in the main those who graduated from normal schools, say even 20-25 years ago, two years of training, come in and teach with us, become permanent, resigned and come back as

temporary teachers and these I insist are often among our most effective teachers but lacking the degree and being close to retirement, the inference is they find it impractical to complete the degree of requirement.

Q For permanent teachers entering on probationary status, you do require a Bachelor's degree?

A This is a minimum for elementary teachers. The equivalent is accepted in a number of specialized positions such as vocational education.

Q Now, for the junior high schools, that would be the same would it not, Bachelor's degrees for permanent teachers?

A That is correct.

Q Are there any temporaries in the junior high schools teaching without a Bachelor's degree?

A Yes. I don't recall the number.

Q Now, let's get to senior high schools. There you require for permanent teachers a Master's degree, is that correct?

A In academic fields, that is correct.

Q Are there temporary teachers teaching in the senior high schools without Master's degrees?

A There are.

Q Now, Dr. Hansen, is there a difference in pay rates between temporary and permanent teachers? And by the word "permanent" we are including probationary and those that have tenure, they are all classed permanent in that last category?

A Probationary is not permanent.

Q If he or she meets the probationary period satisfactorily then become a tenure teacher, or permanent, but he is pre-permanent then?

A Correct.

Q But I am classifying him without objection, knowing they don't have tenure, as all being in the permanent class?

A That is acceptable.

Q Are the salary rates the same between the permanent class and the temporary class?

A The salary rates are the same for the first five years of service. After a temporary teacher reaches the 6th year for placement credit, this is the ceiling beyond which he cannot go as a temporary teacher.

Q So there are limitations then to the amount of money the temporary teacher may earn, is that correct?

A That is correct.

Q These limitations are different than the permanent teachers?

A The difference is a permanent teacher can go on up to the top of her class or grade.

Q Now, Dr. Hansen -- Your Honor, I would rather than show the witness each document, I would offer into evidence certain documents at this point and I will refer to them by both categories as I do so. My first document would be L-1, Your Honor, which is labeled Temporary Teachers by Levels of Length of Service, October 1954 --and this I don't see, this is not a District of Columbia document, this is a document prepared by the Department of General Research, Budget and Legislation, Office of the Statistician, January 25, 1965.

A That isn't a school document.

THE COURT: Isn't a school document?

A No.

MR. KUSTLER: It is one we didn't receive from the District of Columbia.

THE COURT: Let's proceed.

MR. KUSTLER: I'll just offer it in evidence.

The second is L-2, which is Tenure Status of Teachers in District of Columbia Public School System, again, an official document of the School System not received from the Corporation Counsel. L-3, which was received from Mr. Redmon --his No. 2 and 3-- is Teacher Status --Permanent, Probationary and

A Yes, I recognize it as a document I prepared.

Q And is that a document that has to do with the policy of the school system as to the transfer of teachers?

A It does.

Q I would like to offer this into evidence. It is L-4 --no number from the Corporation Counsel.

THE COURT: No objection? Let it be admitted.

Let us proceed.

(Plaintiffs' exhibit No. L-4
was received in evidence.)

MR. REDMON: It is our 44.

BY MR. KUNTLER:

Q Now, Dr. Hansen, does this document which I have just introduced, Plaintiffs' L-4, is this the policy of the District of Columbia as to the transfer of teachers from one school to another?

A It is. May I make certain to add this is an administrative policy.

Q And can you explain to the Court what that administrative policy is?

A I can. It is a policy which says in effect to the staff responsible for assignment of teachers, place the new

probationary teachers into the schools with the greatest number of temporary teachers, transfer no permanent or probationary teacher from any school to a school where the percent of tenure teachers --I am using your definition-- is 70 or above. We have also asked in this circular that the new teachers be given the least complex assignments, advising the principals and their assignment of teachers to make the introduction of teaching simpler for the new teachers by avoiding what is a rather common practice throughout American education, letting the last come take the course most difficult, most demanding, complex kind of assignment.

I also asked, I think, teachers to volunteer to transfer from schools that have fewer problem learners to schools that have a high incidence of problem learners.

I might add this was not a very successful venture.

Q Subject to these criteria which you have established in your last answer to my question, is transfer then at a random basis throughout the school system subject only to the criteria which you have indicated?

A Transfers are never random in the sense it is just done automatically. Any transfer request has to be studied by the officer in charge --background, purposes, justifications,

adaptability. What I was saying here is with respect for transfer by a teacher may not go from "a" school to "b" school if "b" school has 70% or more of tenure teachers.

Q We are not talking solely about transfer, this is policy of assignment of teachers. Let me ask you this, Dr. Hansen: is the race of the teacher or the preponderant race of the school to which assignment might be made, any consideration whatsoever in the assignment of teachers?

A We follow the 1954 Board of Education policy which is assignment promotions, appointments of personnel are not to be governed by race. We place the people on the basis of merit, capacity to serve, qualifications which are not related to race.

Now we do make an effort, and I am sure no one will object to this, and have in the past, to achieve something of a biracial staffing in all of our schools. This is done through consultation and through concurrence on the part of the teachers.

Q Isn't it true, Dr. Hansen, there are at least 18 elementary schools which have all-White teaching staffs?

A Subject to further check, I believe that is the figure of October -- I am not sure.

Q Is it your testimony here today that the staffing of these 18 elementary schools was done solely on the criteria which you have testified to in Court today without regard to race at all, race of the school population, or the race of the teacher concerned?

A Subject to any exceptions which may have occurred or not brought to my attention, I would say since the issuing of the circular, the answer would be yes.

Q And is it your testimony here that this result in these 18 elementary schools which have all-White teaching faculties, that this has occurred independently of any plan from your office, that this is a random occurrence, and I use the term random, I mean random within your own criteria, once having your criteria established and met, the race of these teachers, these particular elementary schools, is happenstance?

A It results from a combination of circumstances, yes. Call this accidental or incidental, yes.

Q It is an accidental result?

A I am not prepared to describe historic conditions as accidental. Take for example a very small school with a staff of four people in it, and we have some of that size among these schools you mentioned, a school where the enrollment

is going down, whereas the staff retires, there are no vacancies, where the remaining staff has been there for a generation of teaching. Now I object in a sense to the term accidental with respect to this kind of event. The event occurs from a culmination of historic factors which produces this condition. So this comes about because of historical characteristics of a particular setting and each school ought to be analyzed on its own.

Q Doctor, are you saying in this testimony that if you have a school with an all-White faculty where you have an opening occur --and this is a small school, we'll say, to use your example-- of 5 or 6 on the staff, that when one opening occurs, you take into consideration the fact that there are 5 White teachers there and there would be a better school system in that particular institution if you didn't bring in a Negro teacher but brought in another White teacher?

A Exactly the opposite. I have instructed the Assistant Superintendent in charge of the Elementary Schools to make a deliberate planned effort to establish biracial faculties in those schools in which this is not occurring.

Q You have announced that policy on many occasions, have you not?

A We practiced it and I have issued specific instructions in this respect to the elementary school department.

Q In fact you were quoted in the Star on December 28, 1965 as stating, and I'll repeat your quoted words and ask you if it is correct:

"Our policy is to deliberately integrate schools at all levels, but the problem is mainly finding White teachers to go into all-Negro schools."

Is that what you are saying?

→ A This is a correct statement and still pertains. May I say we do not appoint staff on the basis of race for any purpose. The presumption must be in all this discussion that merit is the first consideration and has been established before we appoint anybody to any school, White or Negro. I make that point very emphatically.

Q Do you find it just as difficult to get Negroes to teach in what we call White schools?

A I don't believe so.

Q And --

A Let me say this: I have had no reports to that effect.

Q So as far as we are concerned here, it would not be difficult to fill vacancies in predominantly all-White faculties

or these 18 elementary schools with satisfactory Negro teachers if they met the other criteria, is that correct?

A I would say so.

Q Have you personally made any investigation of the 18 elementary all-White elementary schools as to the teaching, why there are no Negroes on those teaching staffs?

A I have discussed this in a number of occasions with both Miss Lyons and now the new Assistant Superintendent, Dr. Johnson.

Q And you have been satisfied with what you heard, is that correct?

A I have not been. I have asked them to make a deliberate effort to establish biracial staffs in those schools. You will note biracial staffing occurs in all other schools, I think, but possibly one senior high school. I don't have the document before me but there has been a significant effort made to accomplish the purpose of biracial staffing, merit being equalled.

Q Isn't it true, Dr. Hansen, there are some 65 elementary schools which have all-black teaching staffs?

A Subject to verification of the figure, there are some, yes.

Q So your last statement is not quite correct, there are elementary schools which don't have any White teachers at all, is that correct?

A I think I made my point with reference to junior and senior high schools.

Q We are talking about elementary schools.

A My statement had to do with junior and senior high schools.

Q What about elementary schools, if the Pucinski Report talks in terms of 65 without White teachers, would you say that is a right number?

A If it is in the record, I would concur.

Q There are some 27 elementary schools which have 1 or 2 Whites on the teaching faculty, would you concur in that?

A You are asking me to make a statistical analysis.

Q Just from your own recollection and knowledge?

A I would say ^{clearly} ~~clearly~~ there would be some small schools or especially schools where transitions still going on where this would be the case.

Q How many total elementary schools?

A 130.

Q So we have 18 which are all-White, and I believe of those 18, if I am not mistaken, 4 have 1 Negro teacher. Does that comport to your recollection to be entirely accurate?

A The only figure comes to my mind is we have 72 elementary schools of biracial faculties --I'll have to check that-- out of 130.

Q Biracial you mean at least one of the other race?

A At least one --teacher, counselor, assistant principal.

Q If you will accept my figures, there are 18 which are all-White, and 65 which have no White teacher. That gives us a total of 83 of the schools which have no teachers of the other race, and if you will accept the figure of 27 having one or two Whites, that leaves a very small number, does it not, of the number of elementary schools with biracial faculties?

A I'd like to have the opportunity to verify the facts of this nature.

Q The figures I have given you are 110 schools, elementary schools --

A That have no biracial faculty?

Q Well, 27 of them have one or two Whites, all the rest are either all-White or all-Negro.

A Well, to get away from this quibble whether it is X number or Y number, let me tell you this for the record so you don't have to pursue it too far, we have a number of elementary schools all-White faculties, a large number, I suspect, about 65 elementary schools which the faculties are all-Negro. I have said we are making a deliberate effort to establish biracial staffing. It seems to me this ought to be purported in your inquiry. We concede we have not reached the level of perfection with respect to biracial staffing.

Q If a White teacher does not want to teach in a Negro school, is that given paramount consideration as to whether to assign that teacher to a Negro school?

A If a new teacher coming into the school system refuses to accept an assignment on account of race, we do not employ that teacher. We do not guarantee a teacher any particular school. If the teacher is in service, say a teacher in one of the elementary schools, has been in service 15, 20 or 30 years, maybe even approaching retirement, does not apply for transfer from the school to another school, we do not enforce that transfer. We do not require it.

Q You are yourself personally opposed, are you not, to rotating teachers who do not wish to be moved?

A I am opposed to totalitarian methods of pushing people around as if they were pawns on a chessboard.

Q If an opening occurred in a Negro school for which a White teacher was qualified but the White person said I don't want to teach in that school, or because of the Negro neighborhood, you would then not force that transfer?

A That is correct.

Q Now, let me ask you another question, Doctor Hansen, if a Negro teacher teaching in a Negro school asked for a transfer to an all-White school, one of the elementary schools, say west of Rock Creek, and that teacher met all the qualification, the criteria which you mentioned in one of your previous answers, would that teacher be transferred if there was an opening in that particular school?

A The answer would be yes.

Let me make a qualification here. You are oversimplifying the problem of teacher appointment-teacher transfer. Everything else being equal, the vacancy exists, the teacher is qualified for it, race would not prevent that teacher being assigned, in fact, despite our efforts to

to be concerned on matters of quality rather than race, everything being equal, we would want to put the colored teacher into that vacancy. I don't want you to oversimplify the business of school management.

Q I am not trying to oversimplify, I am just getting to a few essential facts and you can add on what you wish.

(At this point the Reporter had to replenish his paper and an off-the-record Bench conference was held.)

THE COURT: In view of the fact we have only one reporter this morning, we are going to recess now for lunch until 1:15. The reporter is going to make arrangements to have other reporters come in on the hour from now on, and consequently for the other days of the trial we shall recess from 1:00 to 2:15 each day. We will recess now until 1:15.

(Whereupon at 12:05 the trial recessed for lunch until 1:15 o'clock p.m.)

Henderson
follows at 101

MR. KUNSTLER: There are only two parts in that portion of the subpoena, which is the duces tecum portion.

MR. ERNEST: Yes, because we are bringing him.

THE COURT: He does not have to be served. All right, let's proceed.

(IN OPEN COURT:)

(The witness resumed the stand.)

BY MR. KUNSTLER:

Q Dr. Hansen, when the morning session ended we were discussing, as I recall, the requests for transfers by Negro teachers to what we have called all-white schools. Do you recall that?

A I remember the question.

Q And I think my last question to you was whether the application by a Negro teacher for transfer to an all-white school, whether if that application were made, and assuming your other criteria, which I think you said all things being equal, was your phrase, your other criteria on that, that that teacher then would be transferred to the white school, and you said, I believe, that would be the case.

A This should be the case. There are conditions which we have to keep in mind as I tried to explain just before we broke off.

Q I'm supposing that in my question.

A This is a complex business involving many factors that can't be condensed in one conclusion such as this.

Q Well, I'm assuming all those factors. We have gone over them to some degree this morning.

Let me ask you this, Doctor: In your tenure as Superintendent since 1958 have any Negro teachers applied for transfer to say the all-white elementary schools, Negro teachers?

A This would be information I would not have unless an applicant, for example, should protest a failure to get a transfer and bring it to me, and I'm not aware of any such complaint or protest which has reached my desk. Transfers are dealt with by the Assistant Superintendents in charge of arrivals.

Q Then I take it you have this year no information as to whether any Negro teachers applied for such transfers?

A I have no information on this point.

Q Have you ever made any inquiry as to whether any such transfers have been requested by Negro teachers?

A I've had no occasion to. Within the last week or so the Assistant Superintendent in charge of junior-senior high schools discussed the question of transfers made by teachers in sort of a generality, and he was pointing out that many teachers want to move from the more difficult schools into the peripheral schools, for example to Ravoe, which is our new junior high school opening up in the far Northwest section.

This was a general discussion but did not pertain to specific cases or to the question of Negro-White transfers.

Q And has it been your policy since you became superintendent to, as you stated, as I've quoted from the Washington Star for December 28th, 1965, "to deliberately integrate schools at all levels," as far as the teaching staff is concerned?

A This is correct.

Q Now, Dr. Hansen, I show you Plaintiffs' document marked K-10, which does not bear a Corporation Counsel number, and ask you if you can identify that document?

A Yes, I can.

Q And would you state for the record what that document is?

A This was produced by me for presentation to the Ad Hoc Committee on Equity in the District Schools, chaired by Mr. Pucinski. While this does not indicate by specific reference that it is so, I believe this is from such a document.

Q And you recognize it as such, do you not?

A This is my recollection of it, yes.

Q And does this document contain any information as to the staffing of the District of Columbia schools?

A It does, sir.

Q And does it pertain to the racial breakdown of such staffing?

A It does that.

MR. KUNSTLER: Thank you. I would like to offer that, K-10, no Corporation Counsel number.

THE COURT: All right, it will be admitted.

(Plaintiffs' Exhibit K-10
was received in evidence.)

BY MR. KUNSTLER:

Q Now, Dr. Hansen, just getting to custodial help parenthetically, I ask you if K-4, No. 6 of Corporation Counsel, is a racial breakdown of the custodial help employed in the District of Columbia schools?

A It is.

Q And is K-5, which I am showing to you now, a policy paper by the District of Columbia schools as to the hiring of custodial help?

A Yes, it is.

MR. KUNSTLER: K-4 is No. 6, Mr. Redmon, K-5 seems to have no number. I would like to offer them.

THE COURT: If there is no objection, they will be admitted.

(Plaintiffs' Exhibits Nos.
K-4 and K-5 were received in
evidence.)

BY MR. KUNSTLER:

Q Now, Dr. Hansen, you mentioned in passing this morning

that on July the 1st, as I understand it, a new policy went into effect with reference to temporary teachers; is that correct?

A No, sir, if you refer to the policy of the ⁷⁰⁷⁵ 7% rule -- is that what you refer to?

Q Well, I thought in discussing this morning you said that there was a new policy going into effect on July 1st on temporary teachers?

A It's not a question limited exclusively to the question of temporary teachers. There is a new personnel policy under which we now work approved by the Board of Education to be effective July 1. This has to do with the whole range of personnel practices.

Q Does it include temporary teachers?

A Well, obviously it includes temporary teachers, probationary teachers, qualifications for positions of various kinds in our school system.

Q Well, I am referring only to the portion with reference to temporary teachers for the moment.

A You can't just separate this from the document.

Q Well, Dr. Hansen, doesn't the new policy establish new qualifications for temporary teachers in the Washington, D. C. school system?

A There's a section in the policy statement which defines the qualifications expected of temporary teachers.

Q But lowers the qualifications, doesn't it?

A If I could refer to the document I could be specific. Yes, there is a section in the total document dealing specifically with the qualifications and definition of a temporary teacher.

Q And you've indicated before what the old definition of temporary teachers was.

Can you indicate what the new definition is under the July 1 policy?

A My definition earlier this morning had to do with the status of the position as to a teacher who may have odd qualifications but has not passed the examination and is not taking it. This condition still prevails, except that a teacher may have two years as probationary to take and pass the examination, if all other qualifications are satisfactory.

Q In short, how about probationary teachers? I'm only talking about temporary.

A You can't separate the two. There is no relationship.

Q We understand that probationary teachers are temporary in that they don't have tenure yet. I think you haven't followed it; Doctor. He says that under the new policy a temporary teacher who is not qualified under these national standards can move on into the probationary ranks for a period of two years so he can get qualified. That's what I understand now. That's what you are saying?

A That is what I was saying.

Q And in any other way does the new policy lower or change the qualifications required of temporary teachers to move into what we now call the non-temporary teacher ranks?

A I think we might specify certain changes without making a judgmental determination that this lowers the requirements. We believe our changes would not. An important change is that the teacher for tenure status now need only have 15 hours in education as against 24 and 18, elementary and secondary schools respectively. I do not consider this a lowering of standards. We are requiring greater, permitting greater flexibility in the determination of courses within these fifteen. This is to eliminate the technicalities, the inflexibilities which I think tended to keep competent teachers out of the tenure status situation. This is not lowering requirements. This is simply providing flexibility. We now require a teacher to pass the examination in a major only. We had formerly required a major and a minor. Our position is that the teacher should have the same kind of requirements for teaching in whatever field she teaches. Therefore a minor is not a satisfactory element and therefore we do not require passing an examination in a minor. This will bring many teachers into probationary status who were unable to pass a minor examination because they weren't competent in a minor field. Now, I could go on. Do you wish me to go further?

Q Are there any other changes in qualifications. That is what I was going to.

THE COURT: Does this document speak for itself on these changes?

THE WITNESS: In detail, the personnel document.

MR. KUMSTLER: We do not have this document.

THE COURT: Does counsel have this document?

MR. REDMON: No, they haven't asked for it, Your Honor.

THE COURT: I say do you have?

MR. REDMON: I have it right here.

THE COURT: All right, suppose we admit it in evidence right now. Give it a number.

MR. KUMSTLER: We can give it one of our numbers, Your Honor -- L-17, Your Honor.

THE DEPUTY CLERK: Plaintiffs' Exhibit No. L-17, for identification.

(Plaintiffs' Exhibit No. L-17 was marked for identification.)

BY MR. KUMSTLER:

Q Now, Dr. Hansen, with reference to the number of temporary teachers up to the policy change in the District of Columbia schools, and referring now to the schools which we are classifying as all-white schools --

THE COURT: You better use the words predominantly white.

BY MR. KUNSTLER:

Q Predominantly white schools as against the schools which are called predominantly Negro schools, would you say from your own experience and knowledge that there are more temporary teachers by percentage, not by number, in the predominantly Negro schools than there are in the predominantly white schools?

A I would, sir.

Q Would you attempt to give any percentage figures as to the percentage of temporary teachers there are in the predominantly Negro schools compared to the total number of teachers in the predominantly Negro schools?

A I couldn't do that without an analysis of figures, but I could say this on a general survey, that in the schools which are predominantly white, of which we have relatively few these days, the population tends to decrease. The teachers who are remaining, as I said this morning, tend to finish out their careers in these schools. These in the main will be permanent teachers. The new schools, the growing schools, tend to represent another point of development here which is as schools grow, or as new schools are staffed, the teachers coming in tend to be young, they tend to be at the thresholds of their careers, they tend to be temporary for the reasons I gave you this morning, any one of which might cause it to be the fact. They tend

to be working in new buildings with a growing enrollment. Now, because our population is 90% Negro, I mean our enrollment population, and our teacher staff is 75% Negro, it is an mathematical inevitability that there should be a higher proportion of temporary teachers in the schools defined as predominantly Negro as against those defined as predominantly white.

THE COURT: Do we have a document which shows the number of temporary teachers in each of the schools?

THE WITNESS: We have that.

MR. REDMON: We have supplied it to Plaintiffs' counsel.

MR. KUNSTLER: It may be in evidence, Your Honor.

MR. REDMON: It is Document No. 39 and 43.

MR. KUNSTLER: It is L-3, Your Honor. It should be in evidence.

THE COURT: All right, let's proceed.

MR. KUNSTLER: Yes, sir, that is permanent, probationary and temporary.

Your Honor, at this time I would like to introduce into evidence our M-1 through M-7 -- it's Corporation Counsel 17, with one exception. I think M-5 seems to be -- no, I guess they are all 17, which has to do with the regular full time employees of the system, if there is no objection.

MR. REDMON: I would like to see them.

(The exhibits were handed to defense counsel.)

THE COURT: All right, let's proceed.

MR. KUMSTLER: Shall I go on, Your Honor?

THE COURT: All right, let them be admitted.

BY MR. KUMSTLER:

Q Now, Dr. Hansen, with the new policy of July 1 as it affects temporary teachers, is it my understanding that starting with the school year '66-'67 and continuing onward you will in effect eliminate much of the difference between the word "temporary" and "permanent" teacher; is that correct?

A I would rather use the word "some". It would be more technical, yes.

Q All right. But in effect what will happen will be that the teachers formerly called temporary because of the change in qualifications can now come into the system as permanent teachers through the probationary period, and so on, and end up as what we call permanent teachers?

A There is no change of qualifications. I emphasize this perhaps too much, but the change is in the technical requirements for probationary status.

Q And you don't think the change is merely a semantic one between the word "temporary" now and as --

A It is a real change, but it does not affect the qualifications of the teachers or lower admission requirements to a permanent status.

Q But the qualifications are changed now for permanent teachers; isn't that correct?

A Admission requirements are changed. As I said, for example, no minor examination need be passed, greater flexibility. These are administrative changes which I think will induct into the school system teachers of equal qualifications but bring them into the school system.

Q The end result being to eliminate the temporary teacher; isn't that correct, eliminate the term "temporary teacher" in the school system?

A The end result is to bring into our school system on a career basis teachers who seem to have been kept out because of the complexity of the admission requirements, the red tape, inflexibility.

Q Right. And so in the future after the system is in effect we should see the end of the term "temporary teacher"?

A No, sir.

Q You will still have some room for temporary teachers?

A There will still be need.

Q Under your first two categories; isn't that correct?

A That is correct.

Q Now, Dr. Hansen, getting to the qualifications of teachers themselves irrespective now for the moment of whether we have the temporary or the permanent status to them, I want

according to policy approved by the Board of Education in March, 1957.

Q Official board document as was the other one?

A That is correct.

MR. KUNSTLER: I would like to offer L-10, no Corporation Counsel number.

THE COURT: All right, it will be admitted.

(Plaintiffs' Exhibit No. L-10 was received in evidence.)

BY MR. KUNSTLER

Q Now, Dr. Hansen, with reference to school buildings under your supervision I would like to ask you how many elementary junior high and senior high school buildings there are in the District?

A There are 11 senior high school buildings and 25 junior high school buildings.

Q And how many elementary school buildings?

A One hundred and thirty is the figure that I have in mind.

Q And these are all currently in operation; is that correct?

A Yes, sir.

Q I ask you whether Document L-11, Corporation Counsel 40, is an official document of the District showing the capacity

of each building, how many students are in each building and how many teachers are in each building?

A Yes, sir.

Q Thank you.

MR. KUNSTLER: Now, I would like to offer this and No. 40.

THE COURT: What is this, L-40?

MR. KUNSTLER: This is L-11, I believe -- is that right -- and No. 40, Corporation Counsel.

THE COURT: L-11 is admitted.

(Plaintiffs' Exhibit No.
L-11 was received in evidence.)

BY MR. KUNSTLER:

Q Now, Dr. Hansen, with reference to the elementary schools which are what we've classified as predominantly white and which I believe your testimony indicated 18 of those existed?

A That was your testimony not mine.

Q Well, I'm not testing you. I just asked you if that Pucinski report indicated 18 would that agree with your --

A I accepted that paper at sight.

Q If you have other figures on those you can put those in the record.

A I think the Pucinski report showed 13, did it not?

Q I think it showed 18, but I think it will speak for itself.

A It is not significant. I just don't want you to put words in my mouth.

Q Taking the words out of your mouth and eliminating the numbers for the moment, taking the schools that are predominantly white, the elementary schools, would you say from your own knowledge of the school system that these buildings are being operated to capacity of pupil personnel?

A In most cases they are not.

Q And could you indicate whether the schools that we call predominantly Negro schools, whatever the number there be, are operating at capacity with reference to pupil personnel?

A With some exceptions they are operating at capacity or above.

Q Capacity or above?

A Yes.

Q Now, of the junior high schools do you know of your own knowledge which junior high schools, if any, are what we would call predominantly white?

A I do.

Q And how many are there?

A To use the 50% as a break point, there is one.

Q What about senior high schools?

A There is one.

Q Would you say then that the remaining schools in both

categories, junior and senior high schools, are what we would call predominantly Negro?

A Yes.

Q Is there any difference with reference to the one white junior high school as compared to the, I believe, ten none-white or predominantly Negro junior high schools and the one senior high school compared to the none-white senior high school in capacity of operation as far as pupil personnel is concerned?

A The one predominantly white school is overcrowded, junior high school.

Q What is the name of that school, by the way?

A Dale Junior High School. It is above its stated capacity. The senior high school which is predominantly white is Woodrow Wilson, which is below stated capacity. This school, however, has been called an open school so that pupils from outside the boundaries may come to relieve overcrowding in their home schools.

Q Now, what is the status with the remaining schools in both categories, the Negro schools, predominantly Negro schools, junior high and senior high, as far as pupil personnel are concerned? Are they overcrowded or undercrowded?

A They are over capacity, I believe, in every case.

Q Now, Dr. Hansen, with reference to pupil-teacher ratios, let's start with the elementary schools again, and let

me ask you whether in the predominantly white schools in the elementary schools, whatever the number there be, what is, if you know, the average pupil-teacher ratio?

A Well, I can't give you an offhand figure and we haven't computed this by racial composition. I think the report which has been submitted for the record shows a pupil-teacher ratio in each of the schools. In a general way to make a conclusion from the facts that I know of and serve and check, there is a likelihood that in the small predominantly white school, such as say, Fillmore, the pupil-teacher ratios will be lower than a thirty to one ratio, which is the standard and average ratio of the city as a whole, somewhat lower. This however, again I must say, is not necessarily a question of race. I don't happen to know the pupil-teacher ratio at Jackson Elementary School, but this again is a small school. It's in the Georgetown area. It's one of the open schools. The Negro-White ratio there is roughly 37 to 63, 63% Negro. The point I am making, sir, is the size of the school rather than the race often governs the ratio. A small school with a hundred enrollment will have to have generally as a base at least four teachers. This automatically means a lower pupil-teacher ratio than a school, say, of a thousand where you have a great deal more flexibility. Now, I use Jackson as an illustration of the point I am making that it's not the question of race that results

in the lower ratio because Jackson is predominantly Negro and in the Georgetown area, an open school in which people come from every part of the city, will I am sure without checking have a lower ratio than would be the standard for the city as a whole.

Q Let me ask you this, Dr. Hansen: You have certain board standards, do you not?

A We do.

Q On the preferred pupil-teacher ratio? What is that for the elementary schools?

A Thirty to one and it's grades one to six.

Q Now, when you get to junior high it changes, does it not?

A Twenty-five to one in the academic classes.

Q Is that the same in the highschools?

A That is correct.

Q Now, in the figures which the Corporation Counsel has given us we notice a general average throughout the city seems to be 32 to one?

A You have to identify your averages. I'm talking about pupil-teacher ratios.

Q Well, I'm talking also about pupil-teacher ratios. It seems to be thirty-two to one as a general average across the city.

A In what levels?

Q At all levels?

A This is wrong.

Q As a general average. Is that correct?

A You are misinformed.

Q What is the general average across the city with elementary schools?

A I've just told you now two times -- I believe this is the third time -- thirty to one.

Q Thirty to one? That's the general existing average now?

A That's the pupil-teacher ratio throughout the elementary schools as of last year.

Q I see.

A In the secondary schools the ratio is, in the academic subjects, is twenty-five to one in the junior high schools, perhaps slightly higher. Average class size in the academic studies in the secondary schools runs thirty to thirty-one. I make this distinction so that you will understand that there is a difference between ratio and an average class size in the secondary schools.

Q I'm not trying to ask you questions over again. I thought my question was, what was the board policy, or the District of Columbia policy, as to ratio, and then I asked you for the actual ratio, and the last that you gave was the actual

ratio existence?

A That's right.

Q Now, Dr. Hansen, in what we call the predominantly white elementary schools, would find that from your own experience, that the pupil-teacher ratio approaches or is below the thirty to one, that is, the recommended standard in the District?

A I would think so, but here again I'm operating without figures. I think in the main you might find some deviation below thirty to one in such schools as Key, Stoddert, Mann, Hearst -- I'm not sure about Eaton. So in answering this question, sir, I want to allow for a variable.

Q I'm not holding you to exact figures.

A I'm wanting to say that because of conditions which aren't pertinent to race. The schools are small. They have small enrollments. The staffing is likely to result in class sizes somewhat under the average for the city as a whole.

Q Doctor, I'm not asking for the reasons.

A There are exceptions. This is what I am trying to make clear for you and the record, because there are exceptions. I am sure in the case of Jackson -- It might be in the case of Eaton -- where the ratio is standard, though the race predominantly in one case is white and in the other case Negro.

Q Well, would you say in general in the white dominated

elementary schools, predominantly white elementary schools, that the ratio is thirty to one or better, with relation pupil-teacher?

A I would say so.

Q Would you say the same thing is true --

THE COURT: I gather you mean lower?

BY MR. KUNSTLER:

Q Lower than thirty to one, thirty to one or lower?

A I would say with exceptions, possible exceptions.

Q Now, in the predominantly Negro elementary schools would you say the rate is thirty to one or lower?

A Well, our standards, we achieve thirty to one on a city-wide basis, I suspect if you were to look down the list of elementary schools, identify them as predominantly Negro you would find some running at thirty-two, others perhaps at twenty-eight, twenty-nine, because this is the way the school operations are bound to come into existence. So I would have to say predominantly possibly, yes, Negro, but not exclusively.

Q Well, would your answer be -- let me rephrase the question.

Would you say in general, taking the schools that are predominantly Negro, the elementary schools, that the pupil-teacher ratio is thirty to one or more whereas with the white schools it was thirty to one or less?

A I would give the same answer as I did for the white

but there are exceptions.

Q With exceptions?

A Yes.

Q Now, with reference to the one junior high school which was predominantly white, would you say that the ratio there was twenty-five to one or less?

A I'd have to check that. My hunch would be that it is higher but I would have to check it.

Q What would your answer be with reference to the --

THE COURT: Just a minute, counsel has an objection.

MR. REDMON: If Your Honor please, I don't want to foreclose counsel from a proper examination, but the questions are being asked of Dr. Hansen which have already been documented in the record. Now, if he wants to discuss reasons why they exist, I think that is pertinent examination, but he is asking the Doctor for a guess as to the number, percentage in various schools which he obviously wouldn't have at hand with 160 schools in the system. The records do reflect it, Your Honor. They have the breakdown by schools, and I think we are wasting some time.

THE COURT: Well, it would be useful if we used the records because they would be more reliable than Dr. Hansen's recollection.

MR. KUNSTLER: Your Honor, I think the suggestion is

a good one, and the records are now, I believe, in evidence, and I would rely on that.

BY MR. KUNSTLER:

Q Now, Dr. Hansen, with reference to the boundaries of the various schools in the District of Columbia, as I understand it you work on a boundary neighborhood school system; is that correct? You establish boundaries?

A For the elementary and junior-senior high schools, yes. The vocational schools work on a broader base.

Q There are only five vocational schools, aren't there?

A That is correct.

Q And they would draw from all of the city depending on who wished to go to automotive training?

A That is correct.

Q Now, with the elementary schools, as I understand it, you have established certain boundaries with reference to those schools -- is that correct?

A Yes, that is correct.

Q And are these boundaries drawn and established in your office? When I say "your office" I mean under the superintendent's control?

A They are established by administrative controls.

Q And who is in charge in your office of establishing these boundaries?

A The boundaries for the elementary schools are under the direction of Mr. Talbert who is Supervising Director for Administration, who works in the office of the Assistant Superintendent in Charge of Elementary Schools, and he works incidentally with principals. The boundaries are drawn out in conferences with the principals.

Q Are the boundaries reviewed regularly, or is there a method of review?

A The boundaries are -- do you mean by my office?

Q By your office.

A Only when there seems to be a change which would require analysis. The boundaries are not changed each year, understand; they are changed -- school enrollments may change the balance, but when you get new schools you have to draw the boundaries. In the latter case these are discussed with me at least to keep me informed as to what is being done. If I see any objection or raise questions, I may do this.

Q Now, have these boundaries been changed since you became superintendent of schools?

A They are changed every year to some extent.

Q And they would be changed either to one or two schools, or more each year; is that correct?

A It depends on what has to be done for administrative purposes, but there is an analysis made by the staff each year.

Q Now, I show you N-6, Corporation Counsel 15, and ask you whether this is a map showing all of the city schools in the district of Washington, District of Columbia? I might add for the record this was the map furnished to us by the Corporation Counsel.

A Yes, the maps sometimes get out of date because new schools are added, but unless new schools have been added since this map has been printed, these represent our schools.

Q And you see labeling on this map?

A I do.

Q They represent certain schools by name; is that correct?

A That is correct.

Q And the others are represented by number?

A That is correct.

MR. KUNSTLER: We would like to introduce this into evidence, Your Honor.

THE COURT: It will be admitted.

BY MR. KUNSTLER:

Q Now this map, Dr. Hasen, as you look at it does not indicate the boundary lines for any of the elementary, senior or junior high schools, does it?

A That's correct.

Q Now, I'm going to show you another map, Dr. Hansen,

and ask you whether -- I will start with the -- do you have the other elementary schools -- I have two -- and that's the high school -- whether these represent -- and I know you can't possibly remember every district line, but whether these represent, to the best of your ability of recollection the neighborhood school districts for the elementary schools, and we of course allow your counsel to check our drawing of those lines.

A These are not drawn by school staff?

Q No, they are not.

A They have the appearance of school boundaries. That's the best I can say.

Q And subject to checking by your counsel as to whether they are accurate or not, they have the appearance of being the school boundaries?

MR. KUNSTLER: I would like to offer this in evidence, Your Honor, with the proviso, of course, that counsel may of course check the boundaries which we have drawn. We were not given boundaries in our answer to our production demand.

Do we have a number on this? They are all N-7. We have two more -- N-7. I will introduce them all subject to checking.

BY MR. KUNSTLER:

Q Dr. Hansen, I show you again a map of certain schools. Can you identify these schools by type of school?

A They are junior high schools.

Q And does this map, again drawn by us from your boundary lines, the most recent we had, does this seem to indicate to you the outlines of the junior high schools?

A They appear to be representative of the junior high school boundaries.

MR. KUNSTLER: We will offer this, Your Honor. --
It's all one exhibit -- subject to checking.

BY MR. KUNSTLER:

Q Now we have the last one. I ask you to identify, Dr. Hansen, if you will, these particular schools as to the type of school?

A These are senior high schools and the boundaries appear to be senior high school boundaries.

Q And you are referring only to the solid lines, solid blue lines?

A Solid lines. The optional --

Q Right.

A (Continuing) -- between Wilson and Western, to be specific.

MR. KUNSTLER: We will offer this under the same proviso.

MR. REDMON: My objection to run, Your Honor, to an opportunity to examine, which will take us --

THE COURT: They will be admitted subject to the objection made by counsel with reference to checking the boundary lines, and let them be marked N-7(a) for the elementary schools and N-7(b) for the junior high and N-7(c) for the senior high.

(Plaintiffs' Exhibits Nos. N-7(a), N-7(b) and N-7(c) were received in evidence.)

BY MR. KUMSTLER:

Q Now, Dr. Hansen, these boundary lines, as I understand it, mean that a pupil who lives within the area of the boundary line must go to the school indicated on the map as being within that boundary line; is that correct?

A There are exceptions.

Q Now when you say exceptions are you referring to what you call optional transfer zones?

A No. I'm referring, for example, to the fact that undercapacity schools are listed as open to enrollments from outside their boundaries from overcrowded schools. This would be an exception to your rule. Other transfers may be made on the basis of such factors as day care, the mother working when she gets day care, in a zone outside her own neighborhood school, she may drop the child off there instead of going to school in the zone. I'm simply saying to you that in any kind of intelligent humane administration of schools individual factors have to be taken into account, so we follow the neighborhood

principle. There are exceptions, frankly.

Q All right. Now, Dr. Hansen, taking away the exception of the mother, the day care person, the mother who has to work somewhere across the city and has to drop her child off -- by the way, do you know how many children that would involve?

A I have no idea.

Q Do you have any percentage figure in mind?

A No, we don't break it down.

Q Let's go to the undercapacity schools. I think you've indicated that the white schools, predominantly white schools, elementary schools, are undercapacity as far as pupil personnel are concerned?

A With exceptions.

Q With exceptions. And that the predominantly Negro schools are overcapacity, I imagine with exceptions?

A Yes, sir.

Q Have you established any policy which provides for the transfer of Negro students from overcapacity, predominantly Negro schools, to predominantly white schools which are undercapacity? Is there a regular policy for this in your office?

A There is, but let me phrase the policy without racial designations. Where a school is undercapacity pupils may apply for transfer into those schools from schools which are overcapacity.

Q All right, now let's take the question of the 13 or 18, whatever the number happens to be, of the predominantly white elementary schools -- and I'm referring to those that are all white, where there is no Negro child at all -- has there been any transfer whatsoever since you have been superintendent, from any predominantly Negro school to any of those predominantly or all-white schools where we have the conditions we have discussed -- overcapacity in the Negro school and undercapacity in the ~~white schools~~

A There have been.

Q Do you know how many there have been?

MR. KENNON: May I make a point, Your Honor. I think Mr. Kunstler made an error. Mr. Hansen testified 13 or 18 -- we will check those figures -- schools were predominantly white in terms of teacher staff. Now are we talking about the same thing, Mr. Kunstler, in connection with open schools?

MR. KUNSTLER: Well, I am asking Dr. Hansen whether those schools are all white or predominantly white. I will take his definition. Let's take all the schools west of Rock Creek, for instance.

THE WITNESS: If you use the term "predominantly white" then we don't get into the question of whether there is one Negro child there or not.

BY MR. KUNSTLER:

Q I am willing to use that term. Your definition was that you considered a school racially integrated if there was one person of a different race than the race of a school.

THE COURT: No, that is not what he said. That was with reference to the faculties.

BY MR. KUNSTLER:

Q Faculty -- is that your same definition with reference to pupil personnel?

A I use the term, the memberships are biracial. I worry, I think, over the application of the word "integration" in these cases for the reason that no one has really defined what integration consists of.

Q Well, I am willing to accept the word "biracial." Would a biracial school, under your definition, be a school which had at least one pupil of a different race than the race of the --

A No, the biracial membership in that school; yes, sir.

Q That's all right. That's acceptable. Now, with reference to the schools which are what we call predominantly white then, my question was whether there have been transfers from predominantly Negro because of the circumstances we have been discussing, overcapacity in one area and undercapacity in another, and your answer was yes there have been?

A Yes.

Q Right. Do you know how many transfers there have been?

A I can't give you a number, but I can take off from my memory examples. For example we have established classes for the severely mentally retarded children who are bussed into the schools, by the way, in such schools as the Horace Mann, Hearst, and I think possibly the key in the far Northwest out towards MacArthur Boulevard, and we have attempted to use space available for this particular program which we have had to set up in a space available situation along the city pending construction of a separate building for these severely mentally handicapped children. Then others have been brought in voluntarily. I used the illustration of the Jackson School, which is a school in mid-Georgetown, in which there are now sixty some per cent Negro children. Grant Elementary School is another school in which children will come from other areas in fairly large numbers, and also in which we have established special classes for the sight and hearing impaired children, because we have space there and efforts to make use of this space in a special program. So the answer is yes, quite widespread, use on a free and open basis without furnishing of transportation.

Q Well, what I'm trying to determine is whether you can give any sort of a percentage or number figure as to the transfer

from the Negro schools, predominantly Negro schools, into the predominantly white schools?

A I can supply that but I don't have the information. I don't believe we have discussed this in this connection. We can supply it for the record if you would like to have it.

Q I would like the record to indicate if you have it, how many actual transfers there have been from predominantly Negro to predominantly white?

THE COURT: I think the Doctor says he will supply it, and in supplying it I think what counsel is interested in is not the use made of schools for special purposes, that is mentally retarded and so on, but the number of children who have, under your open school policy, elected to leave an overpopulated school to go to an underpopulated school.

(RECESS)

BY MR. KUNSTLER:

Q Can you see the map?

A I think so.

Q As I point, subject to correction as to boundary lines.

These in general represent the boundary lines of senior high schools?

A I would say so.

Q What I want to question you about: There is only one portion of that --

As I understand it, up to a short time ago you had created an optional transfer zone which I am outlining with my finger on this red or blue dotted line between Wilson and Western High School; is that correct?

A The timing I think ought to be more precise. The optional zone existed, I would imagine, even from before the days of desegregation. This zone is long standing.

Q And that is the zone that I pointed to where I have the initials "W.W." for Wilson and Western?

A That is correct.

Q As I understand, Western today is what we call a bi-racial school; is that correct?

A Yes, or a fairly substantial balance negro and white involvement.

Q It could be said close to 50-50?

A Close to 50-50.

Q Under the optional zone transfer system, a person living within what you call an optional transfer zone could elect to send his children either to Wilson or Western?

A That is correct.

Q Which is the zone we had under discussion here?

A That is correct.

Q And had an optional right to pick either high school?

A May I add, the optional zone existed from the time that Wilson and Western were both wholly white schools?

Q Correct.

A It was not created as a result of racial factors.

Q Let me ask you, again, do you know whether this optional zone area that we have been discussing which I understand is no longer in existence was a predominantly white residential area?

A Predominantly white.

Q When was this optional zone eliminated by you?

A It was eliminated as an optional zone by L. Koontz with my approval effective this school year.

Q When you say effective this school year, the start

of 65-66?

A 66-67. The up coming school year.

Q It goes into effect affecting the coming school year?

A That is correct.

Q Was that done as a result of any criticism your department had received with reference to that optional zone?

A I think it would be fair to say, yes.

Q After the elimination of this optional zone a new one was created; is that correct?

A A new optional zone?

Q Yes, a new optional zone.

A Not to my knowledge.

Q I am referring to the Dunbar-Western situation.

A If you are getting into another area, I'd have to check on this. I am not informed.

Q You knew, did you not, that there was another optional zone between Dunbar and Ballou?

A Yes, I am aware of that. I thought Western was also involved there. But here is where I would like to have a chance to check because I am not completely informed.

Q Is Ballus negro or white predominantly?

A That would be in the record. I would like to have

confirmation on it. I think it is over the 50 percent mark but I am not sure. By that, I mean more than 50 percent negro.

Q More than 50 percent negro?

A That is my impression. I would have to check. If you have the document here.

Q While we are waiting for that, what about Dunbar High School?

A As to what?

Q As to racial composition.

A It is almost all together negro. There may be just one or two students that are white.

Q During the existence of the Dunbar-Ballou optional transfer zone, a person living in the area which I have indicated with my finger as D-B on the map, could go to either high school; isn't that correct?

A If this is in fact the optional zone, as a fact I wanted to check, yes.

Q Do you know yourself, the racial composition of the zone I have labelled as D-B? The one on the Washington Channel around the Fort McHair area, whether that is predominately white or predominately negro?

A I could judge only by the enrollment of Jefferson. I am not sure I want to risk giving you the proportions of

negro or white there. This could be in the record to check.

Q You don't have it?

A I don't have it in my mind clearly. They have to produce it for the record.

Q Dr. Hanson, is it not true that on May 27, 1966, with reference to these two optional transfer zones which we have been discussing, Western-Wilson and Dunbar-Ballou, that both were eliminated by your office, and I show you a document and ask you if that doesn't confirm that particular fact?

A It does, but this is signed by Mr. Koontz as Assistant Superintendent and again, I am professing lack of information as to the change in the Dunbar-Ballou zone.

Q Does Mr. Koontz consult you on these boundary changes?

A He did on the first one, which has to do with Western-Wilson zone. The second one, no, but it is not necessary for him to do that.

Q I am not implying that it was.

A Generally the controversial issues reach my desk.

MR. KUNSTLER: This is N-4. Eliminating from the exhibit any of the comments in red. They are not offered as part of this exhibit. I would like to introduce it.

MR. REDMON: I object to the writing.

THE COURT: Let a clean copy of N-4- be admitted.

MR. REDMON: Tomorrow morning I will have it here.

(Exhibit N-4 was admitted in evidence.)

BY MR. KUNSTLER:

Q With the elimination of the Dunbar-Ballou optional transfer zone and Western Wilson optional transfer zone, do you know, of your own knowledge, whether a new optional transfer zone has been created between Dunbar and Western?

A I am going to have to ask for a time to check with the office on this. As I told you, I am not conversant with the details of that change, if the change has been made.

Q And when you return tomorrow morning, you will have the information as to creation?

A I will.

Q If it has been created.

A I will, sir.

Q Now, on May 13, 1966, Dr. Hanson, again, under the signature of Mr. Koontz, were the boundaries of the junior highs, some of the junior high schools changed?

A They were.

Q And does this document reflect that change?

A I would judge so, yes.

Q Thank you.

MR. KUNSTLER: I would like to introduce the parts of N-4, again. The junior high school change. I don't

have any Corporation Counsel number.

MR. REDMON: If Your Honor please, may we call this N-4-B?

MR. KUNSTLER: Call the other N-4-A, where we have the clean copy coming.

THE COURT: I am not sure I understand the difference between N-4-A and B.

MR. KUNSTLER: One is the change between the optional zones and senior high school^u and N-4-B is the change in boundaries of junior high schools.

THE COURT: May N-4-A and B be admitted subject to a clean copy?

MR. KUNSTLER: We have a clean copy, Your Honor, of B. If you will bear with us a moment, Your Honor, we will put up the other map.

BY MR. KUNSTLER:

Q While the map is being affixed, Dr. Hanson, with reference to elementary schools, as I understand it, elementary schools are located within what we call neighborhood school districts; is that it?

A That is correct.

Q And as I also understand it, you, yourself, are committed to the concept of the neighborhood school?

A I am.

Q Now, the buildings themselves, the elementary school buildings themselves, which are in what we call the predominantly negro school zones, do you have any idea of the average age of those buildings?

A The buildings in the --

THE COURT: Wait just a minute.

MR. REDMON: We will again apply this information to plaintiffs.

THE COURT: Is that in documentary form?

MR. KUNSTLER: It may very be. I will drop it for the moment, Your Honor, and I will check that.

THE COURT: Very well.

BY MR. KUNSTLER:

Q Now coming back to the junior high schools, and you have already testified that this in general, subject to checking, looks to you like the outline, and I am pointing to the map now of the junior high school boundaries, of those boundaries; is that correct?

A Yes, I think we have to bring this up to date with the Rabaut Junior High coming into being. I am not sure these boundary lines reflect that. I believe they do not.

But you understand if you get a new junior high school such as Rabaut, that you have to draw a new boundary line.

Q I understand that. We have it here.

A The document you have there, I think, reflects that.

Q That is right. The document indicates because of Rabaut , you have a change in the boundaries of McFarland, because, McFarland and Paul and Taft?

A That is right.

Q What I am referring to, Dr. Hanson, is, there did come a time, did there not, toward the end of last year, when there was a boundary change announced by your office between Gordon and Deal, I am pointing to Gordon and I am pointing to Deal.

Do you recall that?

A I do, and may I suggest the other map would be more pertinent for this discussion?

Q It would be impossible to have both at the same time, but I will come back to the other map in a moment if you want to elaborate on answers or in any way discuss it from that point of view.

For the time being, to point to Deal and Gordon, what kind of school is Deal insofar as racial composition is concerned?

A Predominantly white.

Q What kind of school is Gordon?

A The racial composition, I would judge, would be 55-45.

THE COURT: Wait a moment.

THE WITNESS: 55 percent negro. If I am too far wrong, I would like to change it but I think this is approximately right.

THE COURT: All right, sir.

BY MR. KUNSTLER:

Q Would it be a safe statement to make, Dr. Hanson, that the Deal population is very much the same as Wilson High School population?

A That would be correct.

Q And that the Gordon population is very much the same as Western High School population, racially concerned?

A Yes, possibly, except that Francis feeds into Gordon. Francis is 90 percent negro.

I mean, Francis feeds into Western. I am sorry.

Q But in general, they would be comparable to Wilson and Western?

A I would say so.

Q They essentially feed the same areas or are populated from the same areas; is that correct? The pupil population?

A I gave you the exception, the Francis population into Western.

Q With the exception of the Francis situation, the Gordon and Deal primarily deal with the same population areas?

A Yes.

Q Now, getting back to the suggested change, at the end of last year, do you recall what that change was, that was suggested by your office?

THE COURT: By last year, you mean what?

MR. KUNSTLER: 1965, Your Honor. The last part of '65.

THE WITNESS: Sir, the adjustment was made three years ago, not last year. It came to public attention last year, and if you reverse the side so I could show you the optional zone, I will explain the rationale for the change.

BY MR. KUNSTLER:

Q I am now turning the map.

A I have reference to the optional zone between Wilson and Western. The children residing in that zone were compelled to go to Gordon because the boundary lines between Western and Wilson and Gordon and Deal were not coterminous. Therefore we had the unusual result of children leaving say, one of the schools in the area there, the Horace Mann School, if they

happened to live in the optional zone they would go from the sixth grade to the seventh grade at Gordon and then having completed Gordon would come to Wilson because it's optional and the parent would send them to Wilson.

And we had split families. And people have come to me, and this is a matter of considerable duration. We had the problem when I was in charge of elementary schools but I had no responsibility then for the system as a whole. And the parents were quite properly asking me why is it that you have such an unusual boundary line designation here that my child has to go to Gordon and then feed back to Wilson? So that my family has to split in two directions at once? Why don't you have the two boundary lines coterminous?

Finally this thing got to a point that issued an order. I take full responsibility for this. Mr. Koontz did not do this except upon my order, that the children residing in the optional zone who would ultimately be permitted to go to Wilson be permitted to go to Wilson in the first instance. This turned out to be an unwise decision because of the racial overtones in this.

And I am going to say this, so you won't have to ask me the questions about it. I am fully aware of it. That it would have been a far wiser thing for me to have said the boundary line will be moved back so these children will all

go to Gordon and then to Western. This was an administrative error on my part made actually without reference to the racial aspect on this thing, because, as I said, this was done three years ago.

Now, in order to get past this administrative error for which I am responsible. Boundaries now have been made coterminous. But moving the children into Western and Gordon rather than into the other direction.

Q That was done -- when this was done originally you were approached by white parents; isn't that correct?

A I would have white parents coming to me for as many as five or six years -- why don't you do something about this? Constantly complaining.

Q These were white parents whose children might actually have gone to Gordon?

A I think they were white parents. But they are the parents of the children attending the elementary school that made the complaint.

Q Let me withdraw that. I just want to ask you whether this statement which appears in the Star on November 25, 1965, is a correct one as far as the motives were concerned. And I will quote the article, from the Post rather, from Gerald Grant.

"The zone was originally set up to allow white students living in it to transfer to Gordon."

A I don't understand the meaning of that statement.

Q Was that the original purpose of the setting up three years ago of the zone we have been discussing here today to allow white parents or white students to transfer to Gordon?

A There is a statement which I have made and on the record that in order to eliminate the contradictory situation, the then favorable administrative situation of having children moving to Gordon who then would be eligible for Wilson, I made an adjustment which I now recognize was a bad one from the point of view of public relations if nothing else, to make the boundaries coterminous at the optional zone.

This has nothing to do with the question of race. It has to do with the question of the allowing of children to go to the junior high school which will feed into the senior high school and as I have already said, Mr. Counsellor, I should have moved in the other direction. I should have said to these parents, you send your children to Gordon and we should have made the boundaries coterminous Wilson-Western, Gordon-Deal.

People will ascribe various motives to my original

decision. I am explaining my motives as honestly as I can, which was to effect a better administrative relationship between the children leaving an elementary school and going to a junior high school. The racial undertones are interjected into this by others.

Q Well we both realize, do we not, Dr. Hanson, from what you said, and if I interpret you wrong, correct me, that the reason that parents approached you three years ago with reference to this change, was to enable their children to attend white Deal and ultimately white Wilson; is that correct?

A I don't see how you can ask me to evaluate the motives of parents and I don't know what their motives were. The reason they came to me ostensibly was with a very clear question of why was it that my child would graduate from the sixth grade of elementary school must go to Gordon, but when he completes his work at Gordon, he can come back to Wilson. Now this has nothing to do with race. I am not in position to describe the motives of the people who raise the question, but I am trying to say this to you, that this objection of parents had come to me over a period of years, going back as far as the time when Western and Wilson were both white and the question of race was not a factor.

Q Dr. Hanson, did you at the time that white parents made this request to you, did you reach any conclusion, if you can recall, in your own mind, as to what you reasoned was the purpose of the request not to go to Gordon but to go to Deal?

A I have already given you my explanation of the basis of the requests.

Q That it was racial?

A No, sir.

Q You think it was not racial?

A I have given you the explanation twice, Mr. Counsel. Must I repeat?

✓ THE COURT: I think he has given his explanation twice. I think the facts will speak for themselves.

BY MR. KUNSTLER:

Q I would like to say one thing.

Gordon is a regular junior high school of the District of Columbia?

A Yes.

Q And Deal is a regular junior high school of the District of Columbia, is it not?

A That is right.

Q And they are in essence both near the optional

zone we are talking about, isn't that correct? Geographically?

A Yes, that is right.

Q And in fact, they are almost equidistant, are they not, from this optional zone in northwest Washington, not exactly, but within reason?

A Yes, I would say they were.

Q So on a transportation basis, it wouldn't make a great deal of difference whether you went to Gordon or you went to Deal; is that correct?

A That is not correct.

Q You think it would make a substantial difference in transportation?

A Yes, sir. You want me to explain why?

Q I was going to point out where is Gordon located on the map and if I were to point my finger, where would it be?

A It would be on Wisconsin Avenue approximately 34th Street, somewhere along in there. Let me give you the explanation, Mr. Counsellor, so you can save time on this.

A parent who has a child at Wilson and a child at Deal has a simpler and better transportation problem to deal with than the person who has a child at Deal, perhaps one at Wilson and one at Gordon.

This was the claim upon which the parents based their requests to me over the years. That having to split

and go in opposite directions creates not only a problem of school relationships but also the question of transportation. This is what I had reference to.

Q But Dr. Hanson, the child would only go to one school at a time; isn't that correct?

A But there may be two or three people in the family going to two different schools.

Q In relationship to Wilson, where is Deal?

A Deal is east of Wilson, I suppose about not more than a block difference between the two schools.

Q Now, when this change that we have discussed was, came to light in the public press, that was at the end of 1965, was it not?

A Yes, sir.

Q And there were many people in Washington who criticized this change; isn't that correct? Whose complaints came to you?

A Well, many, yes. I was under criticism.

Q Sterling Tucker was one of them; was he not?

A Yes.

Q And he was then as he is now on your Citizens Advisory Council; isn't that correct?

A I think time-wise, the complaints, or the reactions of Sterling and others occurred before we had formalized the

Advisory Committee, but Mr. Tucker is now Chairman of my Advisory Council.

Q And didn't Mr. Tucker complain to you that the net result of this was to make it possible for white parents to send their children to predominately white schools?

A He complained in the public press of this.

Q And you knew of this complaint by him and others, did you not?

A From the public press, yes.

Q Did you take any action based on these complaints?

A The action obviously by now has culminated in the elimination of the basis of complaints by establishing, eliminating the optional zone. The answer is yes, we did.

Q And that was the reason, was it not, or at least one of the reasons for the elimination of that optional zone we had on the other map?

A As I told you, I was made very well aware of an error in judgment on my part in the racial context, and we have proceeded to adjust, to eliminate the basis of this complaint.

Q THE COURT: Before you go on, I am trying to get the dates in connection with this particular issue.

As I understand it, this problem which we have been discussing has now been eliminated or will be eliminated when

school starts because of the elimination of optional zone;
is that right, sir?

THE WITNESS: Yes, sir.

THE COURT: And when did this problem come into
effect, three years ago?

THE WITNESS: This is my recollection, that I made
the adjustment three years ago, possibly two years ago. I
have sometimes the problem in chronology.

THE COURT: Two or three years ago.

THE WITNESS: Two or three years ago, and then it
came to light last fall.

THE COURT: And your response to the problem was
to eliminate the optional zone?

THE WITNESS: That is correct, sir.

THE COURT: The elimination of the optional zone
also served other purposes but this was one.

THE WITNESS: This is right. To pull the children
into Western rather than into Deal.

BY MR. KUESTLER:

Q Dr. Hanson, at the time of the creation of the
optional zone in, I believe, 1962, if I am not mistaken?

A Sir, I don't recall when the optional zone was
created. I believe it has existed for about as many years

as I have had anything to do.

Q I am talking now about the coterminus one. The Gordon Deal one, in '62, to make the coterminus with the Wilson one?

A 62-63.

Q At the time of the creation of the Gordon Deal optional zone, we'll call it, for purposes of this hearing, do you recall what the racial composition of Gordon was, as far as you can recollect? Use percentages if you wish.

A I am sorry. I have got to ask what you mean by the creation of Gordon-Deal optional zone.

Q I am referring to the time when you made coterminus with the Wilson Western zone, the Gordon Deal zone which was in '62 or '63.

A That is right.

Q At that time, do you recall what the population by race, percentage-wise was, in Gordon?

A I do not. But I think we can say without being too far wrong that Gordon would have had 40, 50 percent negro enrollment. Perhaps 50 percent at that time.

Q What was the population then by racial percentages of Deal?

A With the possible exception of one or two or three

negro members, Deal was white.

Q Now, Dr, I began to question you before, and Mr. Redmon made an objection. This was in the record, and I find we haven't put it in the record, and I will do so now as to the ages of schools within the District of Columbia.

And I ask you if you will identify Plaintiff's One, Corporation Counsel 41 for the record.

A Yes. These are official documents.

Q And what do these documents reflect?

A One document shows the number of buildings that are 50 years old or older by level and the other document is a catalogue of public school buildings, past and present. Providing information as to date of construction.

MR. KUNSTLER: Thank you. I would like to offer, Mr. Redmon, E-1, your 41.

(Plaintiff's Exhibit No. 1

marked for identification.)

(Corporation Counsel Exhibit No. 41

marked for identification.)

THE COURT: That will be admitted. What is that number?

THE CLERK: E-1.

~~BY~~ MR. KUNSTLER:

Q Now, Dr. Hansen, with reference to the elementary schools which without putting the map on the board for this interrogation, they are constructed throughout the District, are they not?

A Yes.

Q And, as you have testified you have set up certain boundaries for the attendance of pupils at that school?

A We do.

Q And those boundaries in setting up those boundaries is there any attempt in your office to take into consideration the racial make-up of the areas in which those boundaries exist?

Is that a factor at all?

A We have this in mind to do in all matters affecting boundaries in the location of new schools. I am certain, however, that because of the racial distribution, 90 per cent enrollment, and the fact that we have very few elementary schools contiguous to schools that are predominantly Negro for example. I am talking about white contiguous. The fact that boundaries, designations in relation to race is not a significant element in the drawing of boundaries.

Q Has there been any study in your department whatsoever of the educational park possibilities in the District

of Columbia?

A We have not engaged in a research study of the educational park. We are, however, proposing what in a sense is an educational park in our educational occupational vocational technical school proposal of a large campus-type school located in a central area. But the purpose there is not for the purpose of bussing children in from all parts of the city but to establish a competent educational program.

Q For the purpose of our record, would you indicate what you consider to be an educational park? What it is.

A I was about to ask you that question. As I understand an educational park, as proposed in some of the studies developed in New York City, it would encompass an educational establishment with as many as 20,000 or more children and youth being educated there. There would be subsections developed for the primary age children, for the secondary school age child, on the same campus, under separate principals and as I understand the operation, having an identify of their own and that being a part of the concentration of children and for certain purposes using common facilities such as the auditoriums, gymnasiums, cafeterias, libraries, and the child would be transported into the central area, from whatever part of the city is designated to supply that particular park area.

I think one of the primary and perhaps only the justification for it is that this might have the effect of establishing bi-racial schools. And I use the word, "might," advisedly. As I understand it, this is the primary justification for this type of massing concentration of children.

Now if you want me to tell you why I think this is a monstrosity I will be glad to do that.

Q Before we get into why you think it is a monstrosity, I take it by your question to me about what an education park is, that you have not studied the educational park very thoroughly, is that what your question to me indicated?

A If you want to make that interpretation, that is your privilege.

Q I am asking you.

A I have devoted a considerable amount of time to this proposal.

Q Your question to me was facetious was it not?

A Not entirely because there may be definitions ---

THE COURT: Just a minute.

(above question and answer given at same time.)

BY MR. KUNSTLER:

Q You have studied the education park, have you not?

A Yes.

Q Have you done any reading on educational parks?

A I made a point of studying the New York Report pretty thoroughly at the time we responded to some inquiries and proposals for park development in Washington.

Q Was that Dr. Wolf's report?

A It was done under the aegis of the Commissioner of Education, Mr. Allen, and I believe Mr. Fisher was a member of that report staff and possibly Mr. Clark.

Q You know Dr. Max Wolf at all? Does that name mean anything to you?

A I don't know him.

Q Now, with reference to the educational park proposals -- let me withdraw that. Have you read the Commissioner Allen report?

A I have.

Q Have you had any personal contact with Commissioner Allen?

A I have not on this subject but on another subject.

Q Do you have any opinion as a professional educator on Commissioner Allen's competence in the field of education? Would you consider him an expert?

A I would. That doesn't mean I agree with all his positions.

Q I am not insisting that you do. Do you know or have you heard that Commissioner Allen has suspended the building of seven public schools in the city of New York because of his feeling that they would result in a segregated school and a segregated neighborhood?

A When was this done?

Q If you will oblige me one moment, I will give you the date. June 24, 1966. And I will ask you whether you ever heard of that or had any connection with it whatsoever?

~~2/2/66~~ MR. REDMOND: May counsel approach the bench, Your Honor?

(At the bench:)

MR. REDMOND: Perhaps it is time, Your Honor, to make an issue here to determine just what we are proceeding into with respect to this law suit. This line of questioning obviously relates to a proposal to integrate a community by virtue of requiring children to come together into one area. We take the position under law an administrator is not required to do so and that the only requirement is to desegrate and follow such steps. Now, if this is an issue in this case, we would like to know about it now and object to it.

THE COURT: At the pretrial conference we went into this and it definitely was stated at that time to be an issue in this case.

MR. REDMOND: I understand that but now we are in court. I want to know if it is an issue in the case.

THE COURT: The objection is overruled. You can argue the legal aspects at the proper time. As far as the development of facts, we shall develop the facts.

MR. REDMOND: You understand our objection?

THE COURT: Yes. This is a de facto issue, I understand.

MR. REDMOND: We would object to that, too.

(In open court:)

BY MR. KUNSTLER:

Q I take it, Doctor Hansen, we have a question pending.

A I am not informed as to this action, sir.

Q Thank you. Dr. Hansen, you indicated in discussing the educational park plan that one of the purposes of it was to draw people, to draw students of all racial designations from various parts of the city to a central place where they could be educated in total, high school, junior high school, elementary school, library, gymnasium facilities, all in one educational park of the educational factor, isn't that so?

A This is my understanding.

Q I think you have also indicated that you have never proposed an educational park, or parks for the District of Columbia, is that correct?

A Except for the consolidation of the vocational, occupational technical program, which we are now proposing, the purpose there being to improve the quality of education in these fields and not merely to bring children into a central portion for other purposes.

Q So, with the exception of the vocational schools of which I think there are five in number, you have never proposed or ordered any studies into the feasibility of an educational park or parks for the District under your supervision, is that correct?

A That is correct.

Q Now, doctor, you have on the other hand, have you not studied the question of bussing students from one portion of the city to the other?

A I have, extensively.

Q As I understand it, you are opposed to bussing for the purpose of integration, is that correct?

A For the purpose of bi-racial -- solely for that purpose.

Q For the purpose of creating bi-racial schools wherever possible?

A I do that.

Q You oppose bussing?

A I do.

Q Recently, the newspapers carried an announcement of some bussing plan, did they not?

A They did.

Q That is quite recent in the last ten days?

A That is correct.

Q Would you indicate to the court what that bussing plan is?

A The plan is to make maximum use of school space wherever it occurs by making transportation available to children who on an open school policy permitting them to come in furnishing their own transportation are not able to supply the transportation cost.

Q As I understand it, the bussing is not for the purpose of creating bi-racial schools but merely to utilize under-occupied classroom space, is that correct?

A That is correct.

Q I think you also stated, did you not, in announcing the bussing plan this would only be a temporary measure until new schools would be built?

A It is my hope that nothing will be done to prevent the construction of new facilities where the children live.

Q Now, getting to the new construction, do you have any plans whatsoever in the event that you have sufficient funds for new construction as to the building of schools so as

to create if possible by-racial school populations, or is that not in issue?

A This is hardly an issue with us unless we go into the park idea and for example build a -- and I think we would have to go across boundary lines to do this because we have a small percentage, we have only 15,000 white school children in our total school system, many of whom are scattered around in our schools. In order to accomplish anything like the bi-racial composition of schools it is generally thought to be desirable such as anything from 50 to 90 per cent being the top limit, it would be necessary to build parks outside the district boundary lines and through some mechanism not yet existing in law, bring children from the suburban schools and the city schools into this kind of school situation. This is my answer. That from a practical point of view an effort to build a school here or build a school there primarily to achieve a racial balance is not only a waste of time and energy in the District itself but subversive to the real purpose of education, which is to supply education for children in the most desirable kind of setting they can get.

In the case of a primary school child, certainly in its home area, and I am not prepared to take the position that an area, a futile attempt to achieve a balance in the District of Columbia can be supported.

Q You bring up a very interesting point. As an educator most of your life and saying as you do the purpose of education is to provide the most desirable education possible for each child, do you consider from your own experience that the bi-racial classroom where you have whites with negroes in reasonably proximate numbers, not insisting on 50/50, that this serves no purpose whatsoever in creating a desirable education/

A I have not said that.

Q I am asking you what you would say.

A I have said publicly and I have had this in writing that in my judgment the best educational setting would be a bi-racial setting, for white children as well as for negro children. What I have really said was there is no mechanism by which you can achieve this within the limited District boundaries.

Q If there were a mechanism, Doctor, possible, would you be in favor of it if by law there was a possibility?

A I would, if --

Q (continuing) -- of achieving this?

A I would if it would result in a persistent bi-racial pattern. I want to point out historically that under present conditions, white parents tend to leave a school when it reaches the 40, 50 to 60 per cent predominance of negro

enrollments. And until we arrive at an understanding and appreciation among the component elements of a bi-racial school, which will hold the white parents in the situation, an artificial movement of children into a school which at the timesay is predominantly white will within the course of a few years cause the white population to retreat from that situation.

Q There are other factors, are there not, Doctor? Is it also not true that a declining school system, a school system that does not give quality education compared to for example the suburbs would also have an effect on the decision?

A Sir, I want to be as blunt as I can. Your definition of declining school system seems to be coincidental with the change in the racial population of that school system.

Q I am not even suggesting that, Doctor.

A I am reading this into your judgment. Take for example schools up 13th Street. Even Coolidge High School, we have parents coming in two years ago protesting because they wouldn't let them transfer to Wilson. Now, Coolidge High School was highly regarded and we still regard it highly in terms of its achievement with the pupils. But regarded in all circles, college as well as community as a whole as an outstanding secondary school. The element that changed was the proportion of negro pupils in that school, and we are hearing over and over again the same kind of inferences that you are drawing that our school system is declining.

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"It has somehow lost the capacity to provide quality education," at the same time that the enrollment of negro pupils, the enrollment of pupils from depressed homes, the influx of pupils from other parts of the country, these pupils are entering our schools. I maintain that Cooledge is as good a school as it ever was. Maybe it is a better school because it is concerning itself with the needs of the children that come to it. You can take this thing of Eastern High School. Eastern was at one time all white. This school is producing perhaps not the academic records that it did before integration but I can take you to a graduation exercise in which 650 1st graders had graduated in the Armory, over \$250,000 worth of scholarships earned by these young people, negro predominantly, educated in the school that is manned by a negro principal.

I am not prepared to accept your definition of a deteriorating school system.

Q Doctor, I haven't defined the school system. I am asking a question. If we are going to be blunt let's be very blunt with each other.

Let me ask you this: Do you think the District schools, all District schools, do you think the District school system is a better or worse system based on all the criteria we judge a system by, quality of teachers, age of

buildings, quality of plant, availability of textbooks, pupil teacher ratio, space for play and athletics and the like. You know them as well as I do, much better. Do you think the District school system is better or worse than the systems of Montgomery County, Fairfax, Arlington, Alexandria, Prince George's County?

A I had hoped you would be reasonable enough to ask me whether you think the school system was better by these standards now than it was 10 years ago.

Q I want to know if you know right now this moment.

A I am in no position to compare with Montgomery County in terms of academic standards; certainly Montgomery County is going to produce higher records than we do. Woodrow Wilson produces higher records in terms of academic standings than say Eastern High School.

But I say to you Eastern High School might be doing a better job of teaching the young than Woodrow Wilson, for the same reason that pupils of Woodrow Wilson come from homes of academic concerns and rich backgrounds and so forth. If you want to compare the school system now as it was 10 years ago and then make the determination that it is deteriorating, I am willing to debate that issue with you.

Q I am just asking you because I have no personal knowledge whether you think the school system today has

deteriorated from the school system 10 years ago.

A Maybe I misunderstood you. I thought you said ---

Q No, I asked a question: whether a deteriorating school system, if this were the case, would be taken into consideration by white parents of leaving one District for another District? Would that be one of the factors other than merely the ratio issue? That was the question I intended to ask without saying it was deteriorating or not.

A Let me be very blunt with you. For the record, white parents have left school after school in the District of Columbia. As the negro children, the poor children came in, and I am trying to equate economic levels -- it is not a question of race really. If you want to make the analysis, it is a matter of background, cultural experience, traditions and family attitudes. Schools that were regarded as among the best in the country -- I am talking about specific schools -- Roosevelt -- were left by white parents not because the school changed not because there was change in faculty, not because there was a change in classes, not because there was a change in curriculum, but because negro pupils moved into that school.

Now, the white parents invariably say we leave because the school is deteriorating. I haven't found a parent yet who really will say bluntly, "I don't want my child to go in a school that is predominantly negro."

5

Q Is it possible, Dr. Hansen, that you will in the very near future, be the superintendent of an all negro District for all practical purposes?

A Now, 10 years ago, I was asked that by a friend and colleague. He said, "Are you going to be superintendent of an all negro school?" I told him, "I am going to be superintendent of an American school." I do not lay the same emphasis on race that you do apparently, or that others do. Our concern is the education of children that come to us.

Q To answer my question though, is it not that with very very minor exception that you may within a foreseeable number of years go from a 90 per cent negro school system to a 98 per cent or possibly to a hundred per cent assuming that possibility?

A I doubt statistically it will ever be a hundred per cent, but I am sure until the artificially drawn boundaries between the District and the suburbs are broken down this will be the result.

Q Now, Dr. Hanson, do you have any figures in your own mind as to how many whites leave the system every year, white children?

A I have made a very careful study of this year by year since even before I became superintendent, because I have

done some writing on this subject.

Q I am familiar with your writing.

A We found that the rate of exodus has been quite persistent since 1940 and without verifying by going to statistics ranging from two to three to four per cent and then being accelerated to four or five per cent after desegregation in 1954. I have said and I think other people have written to this effect, that the exodus of the white people from the central parts of cities has not necessarily been the result of integration or desegregation. The factors are numerous and I believe there is also an exodus -- beginning exodus -- of negro families into the suburbs for the very reasons that the white families have left. What we are talking about here as I have said before ---

Q I'd like to pursue that.

A We are talking about here the desire for people to improve the quality of living for themselves and their children irrespective of race. For what we have seen in Washington has happened in every major city. People who have been dispossessed of jobs and homes, economic opportunities throughout the country mainly in the south, have come to the cities as a kind of last hope demonstration and our cities were not prepared for this.

These are the people that need the education so they in turn can move out. But until there is an opportunity for free flow of people across boundary lines, the public schools here will be predominantly negro in composition.

There's no question about it.

Q So, we will eventually reach a point where public school system here will be almost exclusively a negro school system with the exception of a few thousand whites scattered among it, isn't that correct?

A We are pretty near at that point now with 90 per cent.

Q You do feel, do you not, that the boundary lines around the District of Columbia with reference to school children and where they can go to school are artificial, is that not correct?

A They were not produced in a bi-racial --- (at same time)

Q And if they were removed is it your testimony that you would tend to achieve some sort of bi-racial schooling?

A You are talking now about the District lines?

Q I am talking about if the District lines were removed for school purposes only nongovernmental.

A I think this would be an inevitable result. It would take some doing. Assuming we could consider this

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Metropolitan area as one unit. It would still take some time to bring about a sense of trust which would make it possible for people to live together and go to school without respect to race.

Q You think this would be desirable, do you not?

A I do.

Q Dr. Hansen, you have read I take it the summary report of the Office of Education of the Department of Health, Education, and Welfare, called "Equality of Educational Opportunity," have you not?

A I probably shouldn't confess that, but I was on the Advisory Committee that helped work out that.

Q I know you were, so your question is all right.

A Be a little careful in asking me specifics.

Q I would like to read a portion to you and ask you whether you agree with this portion of the report. I am referring to the bottom of page 28 and the top of page 29.

"Finally, it appears that a pupil's achievement is strongly related to the educational backgrounds and aspirations of the other students in the school. Only crude measures of these variables were used (principally the proportion of pupils with encyclopedias in the home and the proportion planning to go to college.) On analysis, this

indicates however that children from a given family background when put in schools of different social composition will achieve at quite different levels. This effect is again less for white pupils than for any minority group other than orientals. Thus, if a white pupil from a home that is strongly effectively supportive of education is put in a school where most pupils do not come from such homes his achievement will be little different than if he were in a school composed of others like himself. But if a minority pupil from a home without much educational strength is in with schoolmates with strong educational backgrounds his achievement is likely to increase.

"This general result taken together with the earlier examinations of school differences has important implications for equality of educational opportunity. For the earlier tables show that the principal way in which the school environments of negroes and whites differ is in the composition of their student bodies and it turns out that the composition of the student bodies has a strong relationship to the achievement of negro and other minority pupils."

Enquote. Would you agree with that statement?

MR. REDMOND: If Your Honor please, Dr. Hansen, do you care to read that, or do you understand it?

THE WITNESS: I know what it means. Thank you.

I think there needs to be ---

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THE COURT: The question is: Doctor, whether or not negroes are more affected than whites in schools that don't measure up. In other words, do whites or negroes suffer more in inferior schools?

THE WITNESS: Your Honor, I think the implication here is that given factors being equal the quality of education is affected by the characteristics of the persons in those classrooms. That the school membership has a significant bearing upon the educational process. I believe that is the intention of this. I mean this is the presumption in this statement. And within reason, I would have to say that this seems to be a reasonable conclusion from the findings although I think if you analyze the statistics they are rather thin on this point. The qualifications that I would throw around this are the adaptability and the readiness of whoever goes into any kind of context to respond to those conditions. I don't like to interject this sort of analysis but regardless of race, a child ^{who} is inarticulate and does not understand, that is, can't verbalize, is placed in a classroom where the children verbalize easily with no compunction, no fear, no anxiety, the nonverbal child is likely to be left aside and likely to be depressed and made insecure and it is with this kind of reservation, Your Honor, that I accept the basic tenant of

this conclusion. That as a tenant it is good, but application in terms of individuals must be made in relation to the characteristics of individuals.

MR. KUNSTLER: I am not sure I completely understand that, Doctor.

BY MR. KUNSTLER:

Q I'd like to ask you a few clarifying questions just to clarify it for myself. As I understood your earlier testimony, you approved of for example breaking down what you call the artificial boundaries of the District of Columbia in order to achieve some sort of a racial balance by uniting suburban schools with the District of Columbia in one District for example. And as long as we are fantasizing, we might as well do it together in this way: That you thought this would be a desirable thing rather than attempt to take the District and take your 15,000 whites who are diminishing and from your testimony will continue to diminish to some level and try to scatter them and spread them very thinly throughout the system, isn't that correct?

A Yes.

Q The second portion of that line of questioning was whether you thought from the O. E. Report, the paragraphs I indicated to you, that the report had made the point that

it was better for minority groups with the exception of orientals -- minority groups and in our case here, negroes, -- from an area of equal educational opportunity, for these students to be in classrooms with other groups of say middle class cultures, white middle class cultures to put it right on the line, was better educationally to do that and I thought that you agreed that that was in essence the conclusion of the report. In the paragraphs which I have read and which you have read now personally. Would you say that is their conclusion?

A Yes, with the addition that this apparently is a more beneficial experience for the negro child going into the white context school than for the white child going into the negro context schools.

Q It indicates in fact, the white child going into the negro school will not change but the ---

A Yes.

Q (continuing) -- but the negro child going into the white school will tend to have a better educational opportunity.

A I accept this if a condition doesn't evolve with further retreat of the white parents. This is the condition I am talking about. If the white parents will cooperate with this kind of arrangement and not retreat father out into the

suburbs or into private schools. I would favor this. I would favor bussing to accomplish it. Then, I want to put in one other provision so there will be no misunderstanding that programming children in these situations needs to be done on an individual counseling basis. This is the point I was making, Your Honor, that if you put children into the context in which they can't respond, then you are damaging them. You would have to do your counseling on an individual basis. So that learning and interchange would occur.

Q Then I take it, Dr. Hansen, if the boundaries were extended, if this were the only way as you have indicated, to achieve this result that you would at that time re-think your neighborhood school concept thoughts because this in effect would mean ---

A I would still want to retain the neighborhood school. I favor the neighborhood school concept for the primary age child.

Q But under this, we are discussing now to ~~retain~~ retain the neighborhood school concept would keep the negro schools in the negro neighborhood.

A I would favor the doctrine if the child lives in central Washington approximately under the 6th grade and then if children could be moved say to Montgomery County and there would be a school organization set up in which there

would be roughly 50/50 and the white parents would remain; they wouldn't run; and effort will be made to establish this kind of relationship. This, I think, ought to be undertaken as an experimentation at least.

Q Some kind of Princeton plan?

A No, a Princeton plan --- This presupposes the contiguity of two schools where you just exchange grades. This is not quite the same.

Q The Princeton plan would be for example sending all the children in one system from grades 1, 2, 3 in one school and moving them over to another area from 4 to 6. So you would have some sort of heterogeneity achieved, isn't that correct?

A As long as we are speculating, if 50 parents of children at Deal would elect to send their children to Paul, if by exchange; we would certainly be in favor of making this kind of exchange.

Q You would be in favor?

A Of course.

Q Whether we call it Princeton Plan or something else, it would be the same.

A On this point I am talking about the attitudes of and points of view of the white parents. This is the mandatory element. Unless it is done by cooperation, you lose

the effect of it.

Q So, what you are really saying is if District lines were extended there would be some dependence on white parents not flying further into the hinterlands, isn't that correct?

A This would still have to be done but it would be a little farther for them to go.

Q It might be more difficult.

A There might be more opportunity for them making adaptations than we had in earlier stages of desegregation in Washington.

Q Isn't it possible if these elongated boundaries beyond the District could be achieved legally that there might be a method of drawing them so as to in effect prevent economically white parents from fleeing further away from the District of Columbia until time can prove that living together in a school system has benefits for both races?

A You see, you come constantly to the conclusion that you have to do this by mandate if it is to be done. This is the implication in reference to boundaries. It is my position that there may come a time when parents have no other place to go but until parents begin to see that their children can benefit by attending school which is reasonably balanced, that this benefit prepares them for life in a world community

in which the population is of the various races, until the anxieties which accrue can be overcome, to set up boundaries to enforce this action, will do no more than what we have already experienced in Washington, as we have boundaries then, which encompassed white and negro pupils but the whites fled.

I think this is a distinction we are making between my position and those of others who must do this thing by mandatory means which in my judgment is unproductive and sterile.

Q Would you agree with me, Dr. Hansen, as two Americans that something must be attempted in order to bring about this kind of an education for the negro child?

A I do, and my conviction is that the education is root, preparation of our children for composition in the total society. This is the objective and purpose of our program, and this is being achieved for many many thousands of youngsters each year who leave our schools and go into the world community, attending colleges all over the world, participating in business enterprises. As these young people through the creation of a maximum educational facility are prepared to step into any kind of situation, with the competition, as strong as possible, then we can achieve what you and I both want.

But, my view is this has to be done through the best kind of education we can supply, that the arbitrary

27 reaching out for things like parks, which will be successful only if the people are forced to send their children, or the artificial drawing of boundary lines, which are not consistent with the ordinary sound administrative practice, these things will not last; until the people are prepared to accept them.

Q So, in essence, Dr. Hansen, what we get down to, the nub of what you are confronted with in the school system, you are in essence holding the fort here, are you not until there can be some solution to what we both agree is a real problem in equal education?

A I contend we are doing far more than "holding the fort." I think we are doing the more effective bit of preparation for living in the total community in Washington, than in most other major cities, and our drive and energy has been spent to get better schools.

Q Doctor, I am not implying any implications in holding the fort.

A Well, "holding the fort" seems to be a stable kind of thing, let's not anybody intrude upon us. This is my reaction to your metaphor.

Q I will withdraw the question if you take it that way. I don't mean that. I mean in our discussion here what has been occurring in the District of Columbia as it

approaches the all-black proportions of a school system, that there is nothing outside of doing the best that you can with what you have got here in the way of equipment and so on but the real solution as we approach all-black schools in the District must come from something other than what the school system can do, isn't that correct?

A Well, you must ---

Q (interrupting) Within existing boundaries.

A You must understand when you talk about a neighborhood school, I am not talking about keeping children within this square encompassed by the confines of that school. We are extending every year the operations of taking children out of their local community into areas around the city and into other parts of the country as far as Canada, down to Williamsburg, museums. We are developing a deliberate plan for bringing children into the total community experience within the concept of the neighborhood school. This needs to be expanded further.

Q But, Doctor, what I am getting at is of course you cannot as a school administrator in the District of Columbia cannot create white children to fill the schools, white middle class children, for example. You can't do that with what is at your disposal now, isn't that correct?

A You are quite right, I could not.

Q And, therefore, the solution of that if we both agree that a negro child in the District of Columbia in order to have an equal educational opportunity as the O. E. Report indicates needs the infusion of white middle class children into his school system. That that cannot be done by you, other than playing around with 15,000 white students who will diminish next year presumably within the confines of the present boundaries, isn't that correct?

A Yes, sir, I accept that, with, again, to be cautious, we are not again content to keep children in their local neighborhoods, we get them out. We are trying to do what we can to bring about the neighborhood -- community experience within their neighborhoods.

Q The White House, what we call the Puchinski Report, indicates that some 93 per cent of the pupils of the District of Columbia are now negro. Does that correspond to your percentages?

A My last percentage was slightly under 90. This was the October report and this is the only report we get officially.

Q That is October of 1965?

A That is correct.

Q So, if the Puchinski report states 93 per cent, at this point, you wouldn't be inclined to disagree with that except that your figures that you know only go back to October 1965 --

A This is the only racial count we have had for the past school year.

Q By the way, Doctor, just in passing, your testimony and report before the task force on antipoverty in the District of Columbia hearings which took place last October, I think, ending in January of 1966, your report and testimony appear on pages -- from pages 4 to pages 233. And then I believe that you returned again on pages 536 of the report. Is your testimony and all the exhibits you submitted then, you would at this point not be inclined to disagree with anything you said then and any report you submitted there, is that correct?

A That is correct.

Q Everything there was accurate and the reports submitted were accurate?

A I have not had evidences to the contrary. Let me put it that way. Error is always possible, sir.

Q I am not talking -- asking you the question in order to pick you up on contradictions.

A I understand.

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Q I am just indicating for the purposes of those portions of hearings, that they were correct.

MR. REDMOND: Is Your Honor planning to go until 5 o'clock?

THE COURT: Yes.

MR. REDMOND: I would ask we allow Dr. Hansen a short recess.

THE COURT: As soon as the new reporter comes in to change places.

BY MR. KUNSTLER:

Q Dr. Hansen, with reference to the track system, which I believe you called the four-track system, 4-track curriculum?

A For the senior high school.

Q Four tracks in the senior high school, three tracks throughout the rest of the system, is that correct?

A That is correct.

Q As I understand it there were no track system in existence in the District of Columbia as such until you began your tenure as superintendent, is that correct?

A Would you allow me to explain?

Q Surely.

A What we mean by the so-called track system -- I

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regret the use of the word "track" but it became fastened to the program from the very beginning so let us get out of our mind the feeling that this is a railroad track on which children are placed without any deviations. We have the four-level curriculum organization for the senior high schools.

This constituted the addition to the two levels we had before we organized, the honors program or sequence of courses for students desiring to do the top honors program are eligible and the sequence of programs for children who are severely retarded and obviously clearly for the record something to do with traditional high school level work.

So let me make this point very clear that what we are really doing is presenting two additional levels of curriculum opportunity having had already two.

So, we had ability grouping and we have had ability grouping in Washington for many many years.

In fact, we have had special classes for slow learners from ¹⁹⁰⁶~~1906~~. We simply extended the spectrum by adding two other levels, one at the upper level and the second at the level of severe retardation, thus making what we have come to call four sequences or four tracks of senior high school.

Do I make it clear that what I have really done is extend the program, I have not really created one.

(Whereupon, a five-minute recess was taken.)

(AFTER RECESS)

BY MR. KUNSTLER:

Q Dr. Hansen, to continue with the track situation, as I understand it, the system bearing that name began in the District schools in 1956; is that correct?

A That is correct.

Q Now, you became superintendent in 1958; is that correct?

A That's correct.

Q And it is also my understanding -- and you can correct me if I am wrong -- that you are the architect of the system as it began in 1956; is that correct?

A That's correct.

Q Now, as I also understand the system that began in 1956 was limited to the tenth grade; is that correct?

A Right.

Q And then the following year it went to the 11th?

A Yes.

Q And then in 1958 to the 12th grade?

A Yes.

Q And it did not get into the elementary schools, or the junior high schools until 1959, the year after you became superintendent?

A You need a little bit of clarification there. The

elementary schools have had since 1956, as I told you, programs for classes for atypical children. Not liking the word "atypical" or the reference there to children, and being discontented with the emphasis on custodial care of children, I proposed to the board that the sequence we call basic curriculum be substituted. So what we see here is, shall we say, a remodeling job, a renovation with emphasis on basic education. So in this sense this is not a new thing. The only new element in the elementary schools was we began specifically to identify gifted children, and the same can be said of the junior high schools.

Q So --

A What I'm saying the structure existed. We simply remodeled it.

Q I understand, but by 1959, school year, I guess, '59, '60, as I understand it, you had what I would call a three-track system in the elementary schools and the junior high schools, and those three tracks would be what, honors, general and basic; is that correct?

A That's correct.

Q But in the high schools, and when we refer to high schools we refer to 10th through 12th; is that correct?

A Yes, although the 9th grade also should be embodied, encompassed here. Then we added the college preparatory.

Q The 9th grade is the last year of junior high, is it not?

A Yes.

Q Just for the record, the elementary schools go, as I understand it, to the 6th grade?

A Through.

Q Through the 6th grade, then the 7th, 8th and 9th would be taken into junior high school?

A That's correct.

Q And then finally the 10th, 11th and 12th, three years, would be in the high school?

A That's right.

Q Now in the high school, as I understand it, you had one additional track and that's called the "regular"; is that right?

A College preparatory.

Q All right. Is that what I know as the regular track? Has it been called that?

A Yes, regular college preparatory because actually the honors program is also college preparatory.

Q In other words, in the high school you have honors and regular as being college preparatory?

A Yes.

Q And then non-college preparatory would be the general and basic?

A Yes.

Q Now just to, so the record is clear as to the system, and we'll start with 1959 when the entire system had some, had the track system in effect. When I say "the system" I mean the District system had the track system into effect -- and correct me if I am wrong -- that the categorizing of children into one track or another begins way down in the 1st grade or kindergarten; is that correct?

A No, the word "categorizing" suggests kind of a classification, Mr. Kunstler. It isn't actually.

Q Well, let's use the terms that you use, I think. Let's discuss the junior-primary which occurs, as I understand it, in kindergarten and/or first grade; is that correct?

A This is not what we call a part of the ability grouping program at all. Shall I tell you what it is?

Q Yes, I would like the record to indicate what it is.

A The junior-primary is an intermediate grade between kindergarten and first grade for children who are maturing at a very slow rate, whose maturation level is not sufficient to predict success in the first grade. This is an effort to increase their preparation for first grade work. These children are not categorized in any sense as being mentally retarded. They are simply growing at a slower rate than would be predicted of success in the first grade.

Q All right. Then the only grouping that occurs in this

kindergarten and/or first grade occurs with those students who have shown a greater ability; is that correct? Those are the students who would go into the junior-primary?

A They would move on into the first grade from kindergarten.

Q That's correct, and therefore you would have some -- whether you call it ability grouping or not, you have some weeding out of some sort that occurs at this period in the beginning student's life. Some of the beginning students will find themselves in junior-primary, others will find themselves in another category; is that correct?

A That's not correct. I object to the word "weeding out." This is a study of children's development in an effort to give them the kind of educational experience from which they can profit.

Q I will withdraw the word "weeding out."

A Thank you.

Q At the end of this period, this first grade, you find some students in junior-primary; is that correct?

A That's correct.

Q And those -- how would you categorize those students?

A I have already explained that they are maturing at a very slow rate. Their level of maturation does not predict success in the first grade.

Q And this is done through what, some of the reading readiness tests, is it not?

A The readings readiness test is given and also the judgment of the kindergarten teacher.

Q What reading readiness test do you use?

A Metropolitan.

Q So on the basis of the Metropolitan Reading Readiness Test and the judgment of the principal and/or teacher, some of the students are transferred to junior-primary?

A The teacher is the primary factor.

Q But this is not essentially part of the track system?

A It is not.

Q Now, when does the first test take place with reference to the three-track system, at what age level or grade level, or both?

A Your question implies that testing is directed primarily to what you would call tracking. This is not the case. Our first test is given -- our first comprehensive survey test of achievement, is given in the fourth grade, except for such tests as principals may want to give themselves.

Q Well, the ones that are given in the fourth grade, I assume they are group achievement and group ability tests; is that correct?

A They are achievement tests, they are group tests; yes.

Q But would it be achievement and ability?

A We give two.

Q That's correct. Now, those tests that are given in the fourth grade are given for the purpose, are they not, of determining track status?

A They are not.

Q They are not? What are they given for?

A They are given for the purpose of supplying information which will assist teachers in directing instruction to the characteristics of children in all grade levels, all levels, to provide a survey analysis as to how our youngsters are doing in relation to national standards, and to provide understandings which will be useful to counselors in evaluation children's problems. So that we are using the survey tests -- and incidentally the survey tests have been given for many years -- as a means of supplying information about children which will be useful for these three reasons I have given. Now, of course, it is clear that if a child, on mental abilities tests is doing in the lower ten percentile position. If his achievement indicates that he is a non-reader or reading two or three grades below level, these are factors which are used in counseling in relation to programing that child. Then a determination has to be made whether it appears that the retardation is the result of cultural handicaps, or the result of an organic mental

handicap. Now nobody yet lives who can really tell for sure which is which. But now under today's conditions and under today's policy if the child is believed to be more properly placed in what we continue to call the basic curriculum, he will not be placed there until his records have been evaluated by the Pupil Personnel Services and an individual mental ability test is given. We are making a maximum effort to distinguish the causes of learning disabilities as originating from a mental handicap or from cultural educational handicap.

Q What I'm trying to find out, Dr. Hansen, is that these group achievement and ability tests which take place, as I understand it, in January in the fourth grade, that these tests are taken into consideration along with the other factors you've mentioned?

A You are right, yes.

Q In determining which track the child will go into?

A Really as to whether the child should -- let's talk about this solely, Mr. Kunstler. The only question is whether the child is so retarded that it should be in the special curriculum. Otherwise, he's in what we call the general placement. This is not really a track. There may be five or six, sixth grade classes in one building. The children are placed there in accordance with the principal's best judgment as to teacher relationship, needs, and so on. This is not a tracking

system at all. The only children that are tracked, if we are going to use that word, and I guess we are stuck with it, are those who are placed in the classes for retarded children, which we now call the special academic curriculum, and they are placed in this kind of context only after the most careful examination of their characteristics.

Q Doctor, just generally before we continue on going to the track system, I would like to ask you this question: You testified the track system went into effect in 1956. Now I wanted to ask you one question, whether it was in any way, the institution of the track system was in any way related to the desegregation of the Washington, D. C. public schools and the elimination of divisions one and two?

A I was asked that very same question by Congressman Davis when he was conducting his investigation in 1956, the very same question.

Q How did you answer it then and now?

A I answered it as honestly as I could, but I was charged then with resorting to subterfuge or going all around the world to answer it. The answer has to be a mixed situation, Mr. Kunstler. In my experience as a high school principal and high school teacher I found back in Tech High that 40% of the youngsters coming into the 9th grade were reading below the seventh grade level. We had the same problems of retardation

we have here. These problems originate, you understand, because now we are engaged in developing universal education. You know that. We are no longer selecting out the difficult learners. When I was head of the Language Arts Department we organized three levels of language arts and structure. This was way back in '45-'46 -- '44. So then I was brought to Washington -- I came to Washington, and went into the elementary level where we had to do ability grouping. When I got into the senior high school level in 1956 I was immediately confronted with the impact of reactions from principals, particularly that the children coming into their schools were severely retarded. So I caused a survey to be made and asked the principals what about the tenth grade pupils in our school in 1955. This was 1955. What are their reading levels based upon what are their mathematical levels based upon tests given to them in the preceding ninth grade? I received a report which indicated that 25% of the then present tenth grade group had made achievement scores of sixth grade or below the year before, in the ninth grade. In relation to their ninth grade placement, they were three years retarded, and that 40% of these youngsters had made achievement test scores of sixth grade level or below and they were tested in 1955 in their ninth grades. When you talk about deteriorating school system, I must digress a moment to tell you that the number of pupils retarded enough to be placed

in what we now call the basic curriculum and special academic curriculum in senior high school has gone from 22% in 1958 to about 9% in the last year. That's a digression.

THE COURT: I think the question, Dr. Hansen, is this, whether or not the track system was started as a result of desegregation ordered by the Supreme Court of the United States. Now, that is a simple question.

THE WITNESS: Your Honor, I am trying to give you a compound answer --

THE COURT: Well, was it or not?

THE WITNESS: I am going to give you an unsimple answer because I have to go into my own background, you understand, so you can understand --

THE COURT: Can't you answer yes or no and then go into your own background?

THE WITNESS: I cannot that, sir.

THE COURT: Well, it was not started as a result of desegregation?

THE WITNESS: It was a combination of factors.

THE COURT: Well, this was one of the factors?

THE WITNESS: It was one of the factors.

THE COURT: All right, that is an answer. It is good to take them all.

BY MR. KUNSTLER:

Q Now, when you said, Doctor, that you had received the reason for the track system, as I understand it, was that you received protests, as you stated, from principals of schools, that a great many students -- and I presume they were Negro students; is that correct?

A Not all of them.

Q Were the majority Negro?

A The majority.

Q And these were the students who were coming into the integrated schools now from Division 2 schools; isn't that correct, former Division 2 schools?

A They were coming into all of the schools.

Q But they were coming from the Division 2 schools, what used to be the Division 2; isn't that correct, all Negroes having been there?

A Yes.

Q And you received protests from a great many principals, as I believe you've testified, that a lot of these students were coming in very very ill-equipped; isn't that correct?

A That is correct.

Q And these were the students, were they not, Dr. Hansen, over whom you had jurisdiction with reference to curriculum; isn't that correct, you having been in charge of

curriculum for both Division 1 and Division 2?

A That is correct.

Q Now, Dr. Hansen, to get back to the track system as we have been going through grade by grade, we were up I believe, to the fourth grade, and I had asked you about certain group tests which were administered in January -- is that correct, January of the fourth grade?

A I'd have to check the record. The testing periods vary by grades.

Q Somewhere during that fourth grade period?

A Let's assume this is correct.

Q All right. You gave to all fourth grade pupils, I understand, in all elementary schools, two tests. One would be an ability, mental ability test, I guess.

A That is correct.

Q Was the Otis Test the one administered?

A Yes.

Q And the second would be an achievement test?

A That's right.

Q And do you know the name of the achievement test? Was it Metropolitan? Is that the one you used?

A Yes, I think this was the one used in the fourth grade.

Q Now, at the conclusion of these tests and their

evaluation and the consideration of other factors that you've mentioned before, then the child is assigned to a track; is that correct, that is made in that fourth grade period?

A He is assigned to a fourth grade class unless he is in need of special placement in the special academic or basic curriculum.

Q Now, Dr. Hansen, just to clarify the record, you were discussing ability grouping and the track system before, using them in the same breath. Am I correct when I state that the track system is one example of ability grouping, but there are many other examples of ability grouping; isn't that correct, such as special honors classes and the like without a full track -- isn't that correct?

A Yes, I think that is essentially correct. The difference is that we have a sequence of courses we call the honors curriculum as against having a class in mathematics which might be called an honors class. Is that the distinction you make?

Q That's right. A student who is in a track unlike where you have specialized honors classes, is in a track based on an ability grouping standard which carries him through, forgetting about any cross-tracking for the moment, or any change in designation, carries him through theoretically from the fourth grade through the twelfth grade realizing that there is evaluation along the way, but he is put in a class the entire

curriculum of which is in that track -- isn't that correct -- such as -- well, I will give you an example. If a child is tested out in fourth grade, given the Otis and the Metropolitan tests, plus all the other factors and then it is decided by the principal, along with consultation with the teacher, that that child should go in one of the fourth grade classes that you've assigned in the track program. I assume there are many fourth grade classes, and one of them is in the basic track, or more, that he is put in that fourth grade basic track class, and that he remains -- maybe it is done in the fifth grade after the fourth grade testing, I don't know -- but he remains in that class which follows a certain curriculum called a basic curriculum -- isn't that correct?

A That is correct.

Q Now at the end of this determination being made at the fourth grade, I wanted to ask you whether there isn't some form of testing done in the third grade with reference to certain honors children, we'll call them for the time being? There is another test given, is there not, the California test in the third grade to certain students?

A I don't recall that.

Q I'm just trying to recollect from the House hearings. I'll leave it for the time being. We can come back to it.

THE COURT: Doctor, I may not be following this. There is no track system or any name we would like to call it in the first, second or third grades?

THE WITNESS: There are practically no pupils who are placed in the basic track at those grade levels except for those who may be so exceptionally mentally handicapped that they need the small class placement. There may be a few. But Your Honor knows some children come into school very severely handicapped and need the closest kind of supervision and control, and you need small class placement for that.

THE COURT: I see. So the basic curriculum or basic track, whatever it is called, really does not start until after this testing in the fourth grade?

THE WITNESS: The main thrust of it begins then.

BY MR. KUMSTLER:

Q Dr. ^HJansen, do you know when during the fourth grade period the child is assigned to his track class, whatever it happens to be, what period of time between September and June does this occur in the fourth grade?

A This has occurred mainly, I would judge, at the break in the year, although principals have the authority now, subject to review by the Personnel, Pupil Personnel Services Department, to program the children in the basic curriculum any time they get the clearance on that. This can be done as needed.

Q But as far as administrative policy is concerned, when the fourth grade starts in September all the children are essentially trackless? They are in no tracks. They have their testing sometime during -- my notes say January -- but some time in the year they have their testing toward the beginning of the year, at least the three or four months in, and then following the testing and following the evaluation then somewhere at mid-year, which I take will be toward the end of January, they are then assigned to track classes; is that correct, for the first time?

A Except for those children that teachers believe are so severely retarded that a special clinical examination ought to be made on them, even as early as the first grade. In that case the principal submits the Form 205 and the Pupil Personnel Services Department then asks for a clinical examination of these children, and if the department recommends placement in the basic curriculum at the primary grade level, this placement will be made.

Q How many children are we talking about when we talk about those children, Doctor?

A I can't give you a breakdown by primary and intermediate levels.

Q In percentages is it a great many?

A I think not, but I want to refer in my memory to a 3%

membership in the basic curriculum at the elementary level, which I think roughly produces -- and here I can't even come to a figure -- is it five or six thousand or less? These are in the records somewhere.

Q I am talking about the children that might be tested beforehand?

A Some smaller proportion of the children are being placed in the basic curriculum primary level, less than half of them.

Q Less than half of the 3%?

A Yes.

Q Now, Dr. Hansen, do you recall -- and I will show you the chart on page 27 of the House Report -- do you recall this particular chart going into, before the House Committee?

A I don't recall the origin of this chart, and I have not been able to check the accuracy of it, as I was disturbed by the fact that it seems unreasonable that 67% of our youngsters are reading at grade level. This is higher, you see, than the average.

Q At what grade?

A Third grade.

Q And what happens at fourth grade?

A And at fourth grade the report indicates only 37% do, and so I've not had a chance to confirm this particular set of

figures. This may be right, but I don't believe they came from our office.

Q Well, assuming them to be right -- well, let me withdraw that. You saw this chart, did you not, before you came into this courtroom?

A Yes, sir, I read the report.

Q Now, did you -- and these figures between grades 3 and 4 as to reading at grade level which indicate for the record that at grade 3, 67.2% of the children in the Washington system read at grade level, and indicated grade 4 that 37.3% read at grade level, a drop of a hundred per cent in essence.

Were they startling to you?

A Very startling, and as I have said --

MR. REDMON: Objection.

THE WITNESS: They create --

MR. REDMON: Dr. Hansen, I am objecting to this question. In the first place, if Your Honor please, I think the particular record should be identified into the record in court here. Secondly, I don't think that Dr. Hansen should be forced to testify as to a record which he has not verified and which he has no opportunity to determine if it has a valid basis. Now if he will give us the source of that information and let us verify it and check it out, I think Dr. Hansen can then be in a position to testify as to its veracity and to its

effect.

MR. KUNSTLER: That isn't my question, Your Honor, that he should verify this record, only that he saw this record and was startled by it and what he did to check his own records on the subject. That's my question.

THE COURT: Suppose you ask that question. I haven't heard that question yet.

MR. KUNSTLER: All right, I will reframe the question and withdraw the previous question.

BY MR. KUNSTLER:

Q Dr. Hansen, you have testified that you saw the report contained on page 27 of the House Report and that you are startled by the drop in ability to read at grade level between grade three and grade four of students in the Washington, D. C. school system. I'm asking you whether following that being startled, you attempted at all to check your own records as to whether the House Report was correct or incorrect?

A I have not done so.

Q How long ago did you see the House Report?

A I would imagine two weeks ago.

MR. KUNSTLER: Just for the record's benefit, Your Honor, I am indicating I am reading from page 27 of the report, called "The Task Force Study of the Public School System of the District of Columbia as Relates to the War on Poverty," dated

1966, June, 1966.

BY MR. KUNSTLER:

Q Dr. Hansen, if there is such a drop as indicated in the House Report, subject to your verification, would it, in your opinion, have anything to do with the institution of the track system at that grade level, fourth grade level?

A Has nothing whatsoever to do with it.

Q How do you know that, Doctor?

A Because the institution of the track system really does not begin solely at the fourth grade level. We have basic curriculum children as early as the first grade.

Q Well, how many children are involved in that? You've indicated, I think, one-half of 3%, was that the answer before?

A I gave you the possibility that's something less than half of the total number of children enrolled in the basic curriculum were in the primary units, which would be the grades one, two and three unit, but this is only a very rough testimate. I'm sure it would be less than half. What proportion of this I don't know.

Q Well, those primary grade units, the purpose of those is to increase reading ability, is it not?

A It is to do that among other things.

Q Well, isn't that the real purpose of the primary grade? Doesn't it all revolve around reading at that age level,

kindergarten, first grade?

A No, sir, it includes many other fields of experience, including art, music, physical education, social studies.

Q But reading is one of the prime factors, is it not?

A It's a prime factor, yes, but it is not the sole one.

Q_ Now when the first grade or kindergarten, junior-primary is completed by a child -- let me withdraw that.

In the junior-primary is an effort made to increase the reading ability of the children in the junior-primary?

A Yes, sir.

Q In fact you have a lot of remedial reading teachers concerned with the junior-primary, do you not?

A Well, we have a lot of remedial reading teachers concerned with the reading program in the elementary.

Q Oh, I understand, but we are only talking now about the junior-primary. I'm not trying to eliminate remedial reading teachers throughout the system, but one of the prime efforts of the school administration is to increase the reading ability of those children in the junior-primary -- isn't that correct?

A That's right.

Q Now, once they leave the junior-primary is there any attempt made to determine whether their reading ability has improved sufficiently to join their fellows prior to the fourth grade?

A Teachers know pretty well what children can read by the competence with which they read from the basal reader.

Q That isn't my question, Doctor. The question is whether --

A That's the answer to your question. The answer is yes, they do.

Q And do you know what percentage of that one-half of 3% then rejoin their fellows on an even keel as far as reading ability is concerned?

A I do not.

Q So lacking that figure you really can't answer the question that I asked before, can you, whether when they get to fourth grade and the track system is instituted that the track system itself might have or might not have something to do, assuming the figures to be correct, with the startling drop in ability to read at grade level between grades three and four -- isn't that correct?

A No, sir, the track system could have no bearing upon this at all, if it exists in fact.

Q Well, we must have other reasons then other than the reason of the junior-primary -- isn't that correct?

A I'm sure I don't understand what you say.

Q You base your statement to me on the fact that one-half of 3% were in the junior-primary and you use that as the evidence

that the track system could have nothing to do with this. Now you have conceded here that you do not know how many of those junior-primary children reach equal grade level in reading with the other children. Therefore, you can't base your acquittal of the track system on that statistic because you don't know it.

What other evidence do you have that the track system has nothing whatsoever to do with the startling drop in reading ability, if it exists -- and you have not checked your records so you don't know -- but if it does exist?

A Assuming that the reading drop did occur to the extent indicated between the third and fourth grade, the impact of the basic track organization, which in its entirety encompasses only 3% of the elementary school children, could not in any way contribute significantly to a change in reading levels of all fourth grade children.

Q But there are other tracks involved, of course, in the track system other than basic. We are not only discussing basic.

A What other tracks are you talking about?

Q Well, after the fourth grade testing some children go into other than the basic track; isn't that correct?

A The children are placed either in the fourth grade class or if they require this kind of training, in the special academic class.

Q What I'm trying to say, Doctor, we are not only talking about the basic track people of whom you say there are 3% and we discussed the one and a half per cent involved in that grouping from the junior-primary. There are three tracks, are there not which they start at fourth grade? Some will go into basic, others will go into general, and others into honors -- isn't that correct?

A Mr. Kunstler, suppose that we have ten thousand youngsters in the fourth grade and suppose that 3% applies to the ten thousand. There would then be what, about 300 youngsters in the basic out of this class? And in the honors curriculum at this point we are just beginning to identify, and the number who are actually identified as gifted children from the fourth, fifth and sixth grade through is very small. A great proportion of the children, as you can see, are in regular grades four.

Q Well, let me just read you this, Doctor, from the D. C. Elementary Policies and Programs, which is a publication of D. C. Congress of Parents and Teachers, and I'm only going to read remarks which you have made in your own reports, and I'm asking you this, if this is a correct statement. It is entitled "The Three Tracks." "A basic curriculum program will be set up at the first grade and will continue through the senior high schools. This program will replace the present special classrooms for atypical and overage children and

occupational classes. Separate basic curriculum classes will be established for pupils who need special attention in academic subjects." And I understand that was abandoned right after it was started, was it not? It was called "Basic 2", wasn't it?

A Yes, that's the designation.

Q All right. So we will eliminate that for the moment. Then, "Honors classes for gifted children will be established where these can be feasibly organized beginning at the fourth grade and extending through the junior and senior high schools." This is from a report to the Board of Education on June 15, 1959.

Is that a correct statement?

A That is correct.

Q Then last, the regular track: "Pupils whose achievements are beyond the requirements of basic program but who do not meet the requirements of the honors program belong in this sequence." And that's from the May-June, 1959 Table of Organization of Classes. Is that a correct statement?

A That's right.

Q So what I'm saying is this. The report on page 27 of the Task Force Study Report is not confined to basic students, it's not confined to regular students, and it's not confined to honor students. It's confined to all fourth grade students, and my only question is whether the track system has any relationship to the decline, the startling decline, if it is a fact --

and you can tell us tomorrow whether it is a fact -- but assuming it to be true, whether the track system has any relationship to this startling drop in reading ability?

A My answer is no. It must be sustained by the facts I have given you, that only 3% at the most will be found in the basic curriculum, and the others are in the great middle group, the general track group.

Q That's the regular track; is that right?

A That's right.

Q How many are in that track in the fourth grade?

A I don't have the figure defined for the fourth grade. With 3% of the total enrollment being in the basic track, I would presume then about 97% of any grade enrollment, roughly speaking, would be in the so-called regular program, the general track, if you want to use the word "track" in application there, and that a few, a very small per cent, have been identified as gifted children and may or may not be programmed in special classes for gifted children. So roughly 97% of the enrollment will be found in what we call the general track with a few in the so-called honors classes.

Q Now, just for my own information, I have -- and I assume you are familiar with the publication, the D. C. Elementary School Policy and Program?

A Yes, I am.

Q I will show you the issue of 1961, and at the very bottom of the page of which I have quoted to you there is a box of statistics as to numbers in the various tracks.

Do you know whether they refer to fourth grade students or not?

A These are in grades one to six according to the report here. I would interpret this to be.

Q Grades one to six.

How many does it show in the basic track?

A It shows this of November 3, 1960, 2,351.

Q And how many in the regular general track?

A Well, we'd have to do some subtracting here. There were at this time 30,000 pupils. This is 1960.

Q Doesn't it list them there, Dr. Hansen?

A It does not list those -- no, I'm reading this accurately. I think the total number of children in the D. C. elementary schools, grades one to six, 70,000. Now, it is possible to interpret this as being the children in the regular programs, in addition to the 1470 in honors, 2351 in basic, and 351 in special classes.

Q But it does give the honors grouping, does it not?

A Yes.

Q And what is that figure?

A One thousand four hundred and seventy as of November 3, 1960.

Q Would that same percentage apply today, if you know, the number of children in basic is 2300 as of November 3d, 1960, out of a total population of 70,000, which would be approximately, ~~my figures, around~~ three to four per cent?

MR. REDMON: If Your Honor please, we have given these documents. Perhaps counsel would like to refer Dr. Hansen to a particular document, No. 8.

MR. KUNSTLER: No. 8? I will introduce that, if you have it. I must have it here.

What is the heading of that, Mr. Redmon?

MR. REDMON: Number of Pupils by Curriculum in Elementary Schools on October 21, 1965.

MR. KUNSTLER: I have junior high school -- I have it. What is it, B-4?

BY MR. KUNSTLER:

Q All right, Dr. Hansen, I show you Plaintiffs' B-4, No. 8 for Corporation Counsel, and ask you if that is a summary of the, by track, of the students in the elementary schools?

A It is.

Q As of what year?

A As of October 21, 1965.

Q Thank you. And just to clarify the record I notice that you have three headings -- Special Academic, General and Honors. We've discussed general and honors. What is special

academic?

A This is what we call here and have called previously the basic curriculum.

Q That's the basic curriculum. And I notice on it that as of that date in the basic track there were 107 white children as against 2388 Negro children.

MR. KUNSTLER: I would like to offer this in evidence, Your Honor.

THE COURT: Its number is?

MR. KUNSTLER: B-4.

THE COURT: Let it be admitted.

(Plaintiffs' Exhibit No. B-4 was received in evidence.)

BY MR. KUNSTLER:

Q Do you know, Dr. Hansen, that the -- if you do know it -- that the children in this basic track or utilizing -- may I see that for just a moment -- the term "Special Academic" terminology you have here refer to themselves as "SAPS" -- S-A-P-S? Have you ever heard of that?

A I've not heard of children doing this, and we've had somebody pick up the title. Of course, it is inaccurate because it is a special academic curriculum, not special academic program.

Q But you've heard the term, have you not?

A I've heard it referred to. I saw it in the paper.

Q Now, Dr. Hansen, to get back -- we are on the fourth grade now -- and the children have been sent to their various tracks. Now, as I understand it, you mentioned one of the criteria for doing this, one of the tests that is used to make this determination -- and I'm talking now about the group testing in this situation -- is the Otis Mental Ability Test -- is that correct?

A That's correct.

Q And that gives what is commonly referred to as an --

MR. REDMON: If Your Honor please, we did give them a list of the regular tests so perhaps Dr. Hansen would like to refresh his recollection or see this.

MR. KUNSTLER: We have it right here. We introduced it. I will give Dr. Hansen one, sure. This came in last night, Your Honor. We have not given it a number. We will do so right now.

MR. REDMON: That came in --

MR. KUNSTLER: Yes, last night.

THE COURT: B-10.

MR. KUNSTLER: Yes, that would be B-10, Your Honor.

THE COURT: Let it be admitted.

(Plaintiffs' Exhibit No.
B-10 was received in evidence.)

MR. KUNSTLER: And I will then offer it. It is No. 19, Corporation Counsel, our B-10.

BY MR. KIRSTLER:

Q That, as I understand it, Dr. Hansen, gives an IQ, what we commonly refer to as an IQ, does it not?

A Yes.

Q And have you, as a matter of policy, reached any determination as to what the limits of the IQ rating would be as far as the basic track is concerned or the special academic track? We'll call it basic from now on.

A In the fourth grade now we are using the school and college ability tests which produce a percentile range rather than an IQ, and report a band to indicate a possible range for probable error. This does not produce an IQ value. We are moving away from the use of the IQ. I think we will ultimately abandon the Otis altogether in favor of the School and College Ability Tests straight through. The only time now we use the IQ as a factor for determination concerning a child's placement in the basic or special academic curriculum is when the individual ^{is} test~~is given by the~~ Pupil Personnel Services Department, and this is the final check to determine whether or not they would recommend placement. And at that point an IQ is produced, a particular test used, and I don't know the name of the test, the individual verbal or non-verbal test produces an IQ, and the rough range is for the purposes of the individual test, 75 is the top level.

Q That would be the top level of what we call the basic track?

A That's right, on the individual test. Understand now that we are moving away from the IQ altogether.

Q I understand, but up to this time --

A On group testing.

Q (Continuing) -- it has had a bearing, has it not?

A Up to this time the Otis was used which produces an IQ.

Q Now, after the child goes into the basic track at fourth grade, there comes a time, does there not, Dr. Hansen, when a second group test is administered, is that not right, as far as all students are concerned, or at least basic track students?

A Yes, in the sixth grade the basic track pupils are given another test of general ability, plus the Metropolitan Reading and Arithmetic test.

Q Now the general ability test would still be the Otis test, would it not?

A No, this is another test, not the Otis test. I'm not well enough acquainted with the nature of this test to indicate what kind of reporting it supplies, whether the report is in terms of percentiles or in terms of IQ.

Q Well, is the achievement test, the Stanford Test,

do you use the Stanford Test on achievement in the sixth grade?

A We use that now. We did last year. During this period we used it, during the year '65, '66.

Q You use the Metropolitan Achievement Test back in fourth grade, as I understand. Is that a verbal or non-verbal test?

A Sir, I want to clarify a point. The Metropolitan is an achievement test. We do not use that in the fourth grade now. We use the Sequential Test of Education Progress.

Q That's a recent change, is it not?

A That has been changed now, I think, for the third year.

Q Third year. And can you indicate for the record then which one of the tests we've been discussing, whether it be mental ability or achievement, is verbal or non-verbal? We will start with the Otis which was the mental achievement test used prior, at least three years ago, prior to your change to the Sequential, and I'd like to know about the Otis test on mental ability. I would like to know about the Sequential test. I would like to know about the Metropolitan Achievement test. Are they verbal or non-verbal tests?

A All of the group tests are verbal tests.

Q And would you define for the record what is a verbal test?

A A verbal test depends upon interpretation of either spoken or written words. Now, you are getting me into an area here, just to be a little bit cautious, that I am not fully conversant with. It is conceivable that particularly in the tests of mental ability that all of the group tests have tests that involve spacial relationships, which may not be verbal, but require the pupil to compare forms and figures or discriminate between lines of various kinds, or figures even in fact. So I want to let you know that we have experts in testing and I'm not the expert in testing that maybe should be answering these questions.

Q I'm not asking you to get down to technical details, except you define verbal and non-verbal for us. Is it your experience as an educator of many years standing that children from culturally deprived, the slum neighborhoods, for example, tend to do very poorly on verbal tests, would you say as a matter of rule of thumb?

A Yes.

Q Now, getting into the sixth grade tests, I think you've indicated, as I believe you no longer use the Otis mental ability test in the sixth grade?

A We used it last year and I don't have next year's testing schedule so I can't be precise in answering.

Q That's a verbal test as well, isn't it?

A That's a group test.

Q But it is a group verbal test. I am using it as against non-verbal.

A Verbal -- I would like to again say it is possible some of it non-verbal in that it involves diagrams, geometrical figures, et cetera, but it is a group test.

Q It is a group test, and when you say group tests, it is administered to large classes at a time?

A That's right.

Q And it is a written test, is it not?

A It requires making responses on paper. In the case of the diagrams you might simply be marking the two figures which are alike, vice versa.

Q Then as I understand these group tests when the papers are returned they are sent somewhere, usual to the contracting tester to be scored; is that correct, machine scored?

A Yes, most of them are machine scored.

Q Then they are returned to the school system with some sort of a grade or evaluation, and then they are evaluated further by the school system; isn't that correct?

A That's correct.

Q Now, as far as the sixth grade is concerned, getting into the Stanford, or I don't know whether you use it -- does the record show you use the Stanford Achievement test?

A This year we did.

Q You did? And that is also the same type of test, is what I would call a verbal test?

A Yes, except this is a test of achievement not of mental ability.

Q That's correct. I understand that. In fact it is typed the Stanford Achievement Test; isn't it?

A That's right.

Q And that is given and scored in exactly the same way. It's given to groups, paper is then scored outside the school system and returned?

A Yes.

Q You don't do any scoring?

A We have scoring machines of our own.

Q That was my next question, was do you do any scoring in the school system itself?

A I would have to make the estimate that with the exception the scoring is done on our own machines.

Q You don't know offhand what proportion of the scoring is done by your own machines, do you?

A I don't, except there's a possibility that anything under the third grade is hand-scored, and we don't have a record of testing except in the second grade with the Metropolitan

.. Reading test at that level, and I believe they are hand-scored. These are questions of fact that I would have to check with the test people.

Q Now, Dr. Hansen, about this sixth grade testing, as I understand it the tests we've been discussing, you and I for the last little while, the Stanford test and the Otis Mental Ability test are given in the sixth grade to all pupils except basics,; isn't that correct?

A That is right.

Q Basics take another test; isn't that correct?

A That's right.

Q And what test do the basics take?

A For achievement the Metropolitan Reading and Arithmetic test and for mental ability the test is of general ability.

Q Isn't that what we call the Toga test? Generally they use the first initials?

A That's right.

Q And the Metropolitan is the test they took in the fourth grade; isn't that correct?

A I would not be able to say. They use a Form A with the Metropolitan. It may be that these youngsters in their fourth grade period use the Metropolitan Reading and Arithmetic tests of one form or another.

Q Does your record in front of you show, enlighten you

as to that at all?

A It does not because now in the fourth grade we are using the Sequential Test of Educational Progress, and I'm not sure whether that went into effect at a time to reflect upon the testing of the current sixth grade basic classes.

Q Now, Dr. Hansen, after this testing is done in the sixth grade, this is the testing, is it not, which determines what track in the junior high school, starting at grade seven, the particular pupils concerned will then enter -- is that correct -- in the junior high?

A No, this is not the sole basis for that determination.

Q But isn't this -- I'm not saying it is the sole basis.

A It is a factor.

Q But it is an important factor, is it not, in what track they enter in the junior high school?

A It is a factor, yes.

Q Now, they enter the junior high school, as I understand it, grade seven?

A That's correct.

Q Now when they enter the junior high school do you have any information -- now we have gone through grades kindergarten through six -- what the percentage of movement is from a pupil that is put into the basic track, whether that's done in first grade or fourth grade is immaterial for my purposes.

When they finish the sixth grade, do you what the percentage of movement is from basic to general?

A The only figures I can call upon are these, and I may be wrong in that. The number of pupils who were upgraded from basic to general in grades seven, eight and nine in two periods, two years of study that was made by the head of the department, was in the neighborhood of six hundred, six hundred and fifty, and this is the figure that comes to my mind. This information, incidentally, is in public print and can be confirmed for accuracy, but let's say the magnitude is of this amount.

Q Well, is there anything in public print available -- and we have not been furnished it if there is -- to show any movement in track from relating to the first six primary grades?

A Yes, this was done and included in the report I submitted on the track program to the Board of Education early a year ago. It should be available to you. I think the total number reported by Miss Lyons at that time was something like 115, 116. It moved upward during the year.

MR. KUNSTLER: Do we have that, Mr. Redmon? I believe we asked for this material and we received it, as I understand, only for the senior high schools, if I'm not mistaken. I think it is your No. 8, but it's called "Movement Between Tracks." I have it for senior high school, possibly junior high school,

though I don't see that here, but no elementary. If it's available, can we get it?

MR. REDMON: Certainly.

MR. KUNSTLER: Your Honor, do you want to suspend here?

THE COURT: No, I want to ask the Doctor a question first.

BY THE COURT:

Q Doctor, as I understand your testimony, the children in the basic curriculum in the sixth grade get a different test or series of tests from the other children; is that right or wrong?

A Yes, a different test producer. The Metropolitan test is a different test maker.

Q And what is the purpose of giving the children in the basic curriculum a different test from the other children?

A I asked that the Stanford be given to the sixth grade because I wanted a shift in tests. I did not ask for that for the sixth grade basic for ^ano particular reason, but generally it is believed that the achievement tests have a certain comparability so far as difficulty is concerned. There is no particular reason why the one was chosen over the other except that I did ask for the Stanford for the sixth grade, this year.

Q And I thought perhaps the difference in the tests

might have to do with determining whether or not the child was ready to get out of the basic curriculum into the regular curriculum.

A This is one of the reasons for giving the test, but I'm not prepared to say whether to any degree the Metropolitan is simpler, easier than the Stanford or vice versa.

THE COURT: Well, we will get this other document tomorrow morning, I take it.

MR. KUNSTLER: Your Honor, I have just two matters before we close, nothing to do with Dr. Hansen. We would like Your Honor's permission to take the exhibits with us. We wanted to show them. They are being studied by certain of our experts, and secondly we would like to know, Your Honor, whether there is available in the courthouse a closet for some of this material that we can leave behind. When I say the exhibits, by the way, I don't mean the maps. They are going to the defendant for reproduction, but the other exhibits that have been introduced we don't have copies.

THE COURT: You will be allowed to take the exhibits with you, yes. You will be responsible for their custody.

MR. KUNSTLER: That's correct, Your Honor. We will assume that responsibility.

THE COURT: Now as far as some place in the building for what?

Thereupon,

WALTER TOBRINER

was called as a witness and, having been first duly sworn,
was examined and testified as follows:

DIRECT EXAMINATION

BY MR. KUNSTLER:

Q Mr. Tobriner, my name is William Kunstler, one of
the attorneys for the Plaintiffs. Mr. Tobriner, would you
state for the record your official position?

A President of the Board of Commissioners of the
District of Columbia.

Q And there are three Commissioners?

A There are.

Q And the three Commissioners have what basic
responsibility?

A They have such responsibility as delegated them
by Congress, namely, the running of the District on a day-
to-day basis, to provide budgets and to appear before the
Congress to support legislation or to disapprove it.

Q To get to the budget, when you say provide budgets,
is that the operating budget of the District of Columbia?

A Operating and capital outlay budgets.

Q And as I understand it, once you have approved the budget, it then goes to the District of Columbia Appropriations Subcommittee, is that correct?

A No, sir, it goes to the Federal Bureau of the Budget.

Q I see. From there?

A From there, embodied in the Presidential Budget Message --formerly general budget message, laterally in the last two or three years a special budget message for the District of Columbia.

Q How long have you been one of the Commissioners?

A Since March 1961.

Q And I understand prior to that time you were on the Board of Education?

A I was.

Q Do you remember when you first went on the Board of Education?

A Eight years prior to that, which is 1953, I believe.

Q That was during the time when we had two divisions --Colored and White?

A When I started on the Board of Education.

Q You were President of the Board of Education, I understand for three of those eight years?

A Correct.

Q What years?

A 1958-1961.

Q Just before you became Commissioner?

A Yes.

Q As I understand it also, Commissioner Tobriner, the budget for the District of Columbia is prepared similar to most large cities, in other words, various departments submit their requested budgets to their supreme body, which in your case would be the Board of Commissioners, is that correct?

A Yes. As I understand it, the various departments filter their budgets up from the field to the head of the department who then presents the request to our budget office. In our budget office, it is a District budget office, the request is screened with consultations with the various department heads and then they are presented by the --by our budget office-- to the Commissioners. Those departments which are not satisfied with the budget office mark-up have the right of appeal to the Commissioners, and they are individually heard by the Commissioners who after such hearing finally mark-up the budget.

I might also say during the budget process there is a public hearing at which citizens interested in various

aspects of the budget are given the opportunity to appear before the full Board of Commissioners and make their requests known.

Q When this is all done, all the appeals are over with, all the requests have been made, then as far as the District is concerned, the Board of Commissioners has the last words subject only to what happens to it after it leaves your hands, with the Congress, is that correct?

A That is right.

Q And the Bureau of the Budget?

A That is right.

Q Now, included in these budget requests are, of course, those from the Board of Education, is that correct?

A That is correct.

Q And that comes to you as I understand it, in a budget, in a traditional form of budget?

A In a series of requests.

Q Operating, maintenance and capital outlay -- those are the three main breakdowns?

A Operating, maintenance and capital outlay, I should think that was a reasonable form of classification.

Q Now, leveling particularly on the Board of Education which is the one which we are interested in here mainly, you have since you have been on the Board of Commissioners -- 1961-- sat on or presided over at least five school budgets, is that correct?

A I would think so.

Q Now, in your opinion, would you say that any one of those budgets which you ultimately approved with whatever cuts occurred, that any one of those budgets for any one particular year, was sufficient or insufficient to correctly operate the Washington --District of Columbia Schools?

MR. REDMON: Objection, Your Honor. The reason for my objection is Mr. Tobriner is not an expert on the needs of the Board of Education. His expertise in terms of budget would reside in what funds are available for appropriation to the Board of Education. The Board of Education, Superintendent and combination are experts in this field.

THE COURT: Commissioner, you recommended the budget in each case to the Congress?

A Yes.

THE COURT: And if you didn't approve the budget you wouldn't recommend it?

A That is correct.

THE COURT: You approved it because you felt on representations made it was a proper budget?

A Yes, on project-by-project review.

THE COURT: All right, sir.

MR. KUNSTLER: You overruled, Your Honor?

// THE COURT: I got the questions answered for you.

MR. KUNSTLER: All right. Now Commissioner Tobriner, with the five budgets --and I assume it is five just from the year basis-- in which you in some way participated on the Board of Commissioners, do you recall whether in every case with every budget, that the Commissioners lowered the requests made by the Board of Education before sending it on to the Bureau of the Budget?

A I don't think in every case. In some instances actually the budget transmitted to the Bureau of the Budget and the Congress contain more than the original requests by the School Board.

Q Commissioner Tobriner, I show you Exhibit O-1 --it is your (Redmon) Exhibit 28, and ask you to point out to me any year since you have been on the Board of Commissioners when you approved less --let me put it this way-- the same or more than was requested by the Board of Education?

A I have here, if I may refer to this, Your Honor?

THE COURT: All right.

A A compilation that was gotten up very hurriedly yesterday and may not be totally accurate, but I find for example, in the year --the budget for the year 1966-- the schools requested for operating expenses \$76,726,000 and the Commissioners allowed \$77,679,000.

Q So what you are saying as far as total budget is concerned, I was correct in my statement, was I?

A However, in respect to capital outlay, if you take the total budget for that year, the request to the Board of Education was \$170,205,000 and the amount allowed by the Commissioners was \$107,128,000, which was about a \$75,000 reduction. So technically, you are correct.

Q Commissioner Tobriner, would you look at the figures I have given you which are an official document, is there any year in which the entire budget requested by the Board of Education was not cut since 1961 by the Board of Commissioners?

A Not according to this document, but according to the document I have in the year 1966 the difference was only \$75,000.

Q Downward or upward?

A Downward.

Q Before I offer this into evidence, the figures which I have on O-1, indicate in 1966 the Board of Education request

was \$121,322,225 and the Commissioners approved \$107,128,500 which in my addition is correct --or subtraction-- is a difference of some 14-15 million dollars downward?

A The figure I have for the request of the Board of Education is \$107,205,000.

Q All right.

A There is a discrepancy.

Q But the Board of Education is correct at \$120 million?

A No, sir, I have \$107,205,000. But as I say, this was hurriedly prepared and may be in error.

Q Then I would like to offer into evidence O-1, which is amounts requested and granted --requested by the Board of Education and granted-- approved by the Commissioners and ultimately appropriated by Congress. Mr. Redmon?

MR. REDMON: No objection.

THE COURT: It will be admitted.

(Plaintiffs' Exhibit O-1 was received in evidence.)

BY MR. KUNSTLER:

Q Now, I would also like to offer in evidence Plaintiffs' O-2, which is amounts requested by the Board of Education --Your No. 28 again, Mr. Redmon-- for operating

expenses approved by the Commissioners and ultimately appropriated by Congress. Do you want to take a look at them? (Hands exhibit to Mr. Redmon.)

THE COURT: Let it be admitted.

(Plaintiffs' Exhibit No. O-2
was received in evidence.)

MR. KUNSTLER: Then O-3, again Corporation Counsel's No. 28, the same items except these are for the capital outlay. (Hands document to Mr. Redmon.)

THE COURT: Let it be admitted.

BY MR. KUNSTLER:

Q Now, Mr. Tobriner, you recall of course testifying before the, what we call the Pucinski Task Force Committee?

A I do.

Q And you testified on much the same area that we are discussing here, isn't that correct -- budget?

A In part, yes.

Q Is it also not a fact that in every instance since 1961, since you have been on the Board of Commissioners, that Congress has cut down further the budget requests approved by you with reference to the Board of Education?

A I can't answer that with accuracy, but that is my general recollection.

Q If the figures show that --

A I would not quarrel with the figures, right.

Q Now, can you give me some idea of the source of revenue under control of the Board of Commissioners with reference to the raising of funds independent of what is requested from Congress?

A Yes. I am speaking now of the general fund from which the school appropriations are funded. This fund is made up of the revenues derived from various forms of taxes that we have here --license fees, other excises; we have an income tax, we have a real estate tax, we have a personal property tax, we have a tax on telephone calls, we have a sales tax, we have a myriad of taxes, all the taxes that are possible to think of.

Q Now, are these taxes subject to raising or lowering solely through the Board of Commissioners' action or do they need Congressional approval?

A All except real estate and personal property are subject to legislation --authorizing legislation.

Q So the real estate and personal property tax are solely within your control?

A Correct, except as to bottom on the real estate tax which is fixed by the Code at \$2.26 a hundred.

Q There is no maximum?

A No maximum. That is minimum.

Q What is the real estate tax?

A \$2.70 per hundred assessed value.

Q Do you recall since you have been on the Board of Commissioners whether this tax has changed up or down?

A Yes, sir, it has. I thought I had a statement here or memorandum, but from my memory --(looks through files) Yes, the real estate tax rate in fiscal year 1960 was \$2.30 per hundred assessed value. In 1962 the rate was increased to \$2.50 per hundred assessed value. And fiscal 1966 the rate was increased \$2.70 per hundred assessed value, and that rate is in effect now.

Q Now, Commissioner Tobriner, are any of the school operating, maintenance or capital outlay costs met by any funds received from the real estate tax?

A Yes, as far as all of these funds are put into the general hodgepodge of the general fund, they go to bear a part of the school operating, maintenance and capital outlay programs.

Q As I understand it then, the difference between the approved budget --let me ask you the question, you have three budgets in effect --and I use the word "budget" very loosely-- you have the budget submitted by the Board of Education to the Commissioners, that is Budget One. You have

Budget Two, which is what you approve; and then you have what I call Budget Three which is not a budget at all but what the Congress approves, appropriates to meet Budget Two. Now what do you use, how do you make up the difference between the budget you have approved and the appropriations received from Congress?

A Well, the appropriations that we receive from Congress is on a balanced budget basis. In other words, the funds that are raised by the District of Columbia together with the funds that constitute the so-called Federal Payment budget, our expenditures must be within the total of those two items.

Q So you then must work on Budget Two, is that correct, the budget approved by you is the one you must work on, is that correct?

A The budget approved by us in most instances is a balanced budget. However, at times we have submitted an unbalanced budget, that is a budget where the expenses are in excess of anticipated revenues where we are hopeful as is the case in respect to the 1967 budget, before the appropriations are finally made, Congress will pass authorizing revenue legislation that will enable us to make up the deficit.

Q All right. Putting that aside just for the moment, if the budget requested by the Board of Education is \$1 million, and you approve \$800 thousand, and Congress appropriates \$600 thousand, then you would have to --the Federal payment would be \$600 thousand --\$200 thousand to make the difference between 6 and 8 would come from your general, is that correct?

A No, sir, we can only spend what Congress appropriates.

Q So Congress appropriates \$600 thousand?

A Right.

Q That comes to your till. Now, my question is, what do you do then with the tax you receive from real estate with reference to the \$600 thousand approved by Congress?

A We submit a budget for all departments and every instance that I am aware of, our appropriations have never exceeded what our budget submitted has been. So there are cuts all along the line. We never have an excess of money to carry over to the next year unless that excess might be the result of unforeseen lapses in employment or inability to complete a capital outlay program within the year for which funds have been appropriated.

Q Commissioner, this I understand. All I am trying to determine here is does the budget include the anticipated tax revenues that come from sources other than the Federal payment or does not?

A The budget is funded by the total of our local taxes plus the Federal payment.

Q That is what I understand. So then you would operate on Budget Two which is a budget approved by you which includes the anticipated tax revenues, whatever the appropriation brings in?

A We would operate on appropriations granted us by Congress.

Q One thing I just don't understand, one fact. You operate on appropriations given by Congress but you also have other funds coming from personal property taxes --

A No, those are all funds that -- we don't have the right to spend one cent although it is raised locally, unless that money is authorized and appropriated to be spent by the Congress.

Q So is it your testimony then that according to your knowledge Congress/ⁱⁿfixing its appropriation is also including in that figure monies raised locally by the District of Columbia?

A That is right. We must submit a budget not only of proposed expenditures but a budget of proposed revenues to finance those expenditures.

Q Now I begin to understand it a little better. When Congress appropriates X dollars for the District of Columbia, that appropriation includes the local revenues raised by the District of Columbia?

A That is correct.

Q So it is not strictly speaking, a complete appropriation from the Congress, it is included with something else?

A Well, it is an appropriation from the Congress because our revenues are paid in the general fund of the Treasury and we can't get them out unless Congress says we can.

Q Just to bring it to a close, you have two items go into available funds, one, Congress appropriates from its sources for you, and secondly, included in that would be the funds you have paid in the general Treasury through local taxes?

A That is right.

Q That local tax action was real estate and the personal property tax which are the only two under your control?

A Well, Congress has authorized us by past legislation to impose and to collect these other taxes.

Q But you need Congressional approval for those, you collect them of course?

A We have got Congressional --

Q --I understand, but you need no Congressional for real estate or property?

A For increases or decreases.

Q So the rest of the revenue would come in from local taxes, would come from certain local taxes like cigarettes, alcoholic beverages, motels and the like?

A Right.

Q Now, you receive of course requests from other departments as well as the Board of Education, isn't that correct?

A That is right.

Q Now you receive requests from, for example, the Police Department?

A Right.

Q Now in the Pucinski Report, this statement appears, and I want you to answer whether it is true or false on your own recollection: Page 9: "Since 1961"--which was the

first year you were on the Board of Commissioners-- "the Commissioners have approved less than two-thirds of capital requests made by the Board of Education." Is that a true statement?

A Is that my statement?

Q No, not your statement, are the facts true?

A I couldn't answer that without an analysis of figures involved.

Q Would you say there have been substantial cuts in requests by the Board of Education for capital outlay funds?

A I think the word "substantial" involves an opinion which I can't give. I would say there have been cuts.

Q The figures would speak for themselves, is that correct?

A Yes.

Q The Pucinski Report goes on to say comparable cuts were made in School Board requests for maintenance funds. Is your answer similar to the one about capital outlay, the figures speak for themselves?

A I can't answer that because I don't know the comparison made. There have been cuts as the ^{figures} figures you have indicated previously would speak for themselves, on yearly basis.

Q From your knowledge, and I believe Dr. Hansen testified before the House hearings that it would take some \$268 million to overcome obsolescence, depreciation, shortage of space, etc., in the schools in the District. From your ~~From his~~ knowledge of the District as a Commissioner, you think that is a fair statement by Dr. Hansen, is a realistic appraisal?

A I have no basis not having analyzed the figures submitted by Dr. Hansen. I have no basis to answer that question accurately.

Q Now, let's get back to the Police Department. Do you have any figures with you as to what the Police Department has requested for approval in the budget by the Board of Commissioners?

A I do not but with the Court's permission, I would be very glad to supply them to counsel or the Court, if the Court may direct it.

MR. KUNSTLER: Your Honor, we would like a direction as to that, that was one of the items on the subpoena yesterday.

THE COURT: What precisely do you want?

MR. KUNSTLER: We want only to show what the Police Department requested and what the Commissioners approved, and

will go from years '61 to '65.

MR. REDMON: Your Honor, you recall the objection made yesterday in terms of the appearance of the Commissioner subpoena duces tecum, the whole line of questioning is irrelevant before the Court, the fact is budget requests have been cut but not by the defendants. Mr. Kunstler or the Plaintiffs have some axe to grind with the Commissioners. I suggest they join them as defendants, we will suspend for a while and prepare their defense. But if they are not attacking the Commissioners, as they apparently are not, the whole question of budgetary considerations by the Commissioners and the Congress is irrelevant. The fact is the Board of Education has submitted their request -- we stand or fall on those requests, will be able to explain or justify them to the Court. Now we agreed yesterday that Commissioner Tobriner would not have to bring any documents down this morning but would testify generally as to the method of appropriating money. We have gone far beyond that field at this time and respectfully request the Court curtail this examination.

THE COURT: That is overruled. The Court wants a whole picture of this case. Commissioner, apparently counsel wants to determine whether or not the Police budget has been cut first by the Commissioners each year and then whether or not your recommendations to the Congress have been cut?

A Yes, I can supply that material.

THE COURT: And can you supply the information for the last five years, for example?

A Certainly for the last three years. And there are other departments, of course, have been cut too.

THE COURT: Like what?

A Health, all of the other departments. Very rarely in my experience has a department got what it asks for.

THE COURT: How far do you want to take this?

MR. KUNSTLER: I'd be interested in the Police Department, Your Honor.

THE COURT: Limited to the Police Department?

MR. KUNSTLER: I would like if possible to have the main departments -- I would like Welfare, Health, Police -- what are some of the other main departments?

THE COURT: Would you state the purpose of his information?

MR. KUNSTLER: The purpose, Your Honor, is just to indicate that particularly our information is with the Police, that the Education budget is cut much more severely than other departments and that the Education budget is apparently singled out for cutting much more than the Police Department and the other essential service departments, and while we are

not in any way to answer the questions raised by Mr. Redmon, we are concerned mainly in the events the Plaintiffs prevail that in ascertaining relief in this case that the Court have a full picture what the situation is with respect to what happens to the Education Department on a comparative basis with other departments in the District of Columbia.

THE COURT: What inference would you draw from this information? Let's assume the information would show that the budgets of the Police, for example, are not cut substantially, yet budgets of the Board of Education are cut substantially, what inferences would you want to draw?

MR. KUNSTLER: I would like this, Your Honor, evidence we have is 26% of the budget is the school budget and that 54% of the cuts come from the school budget and we take the position that in the ascertaining of relief by this Court, it may well be the money situation becomes very important. Part of the relief may be, assuming Plaintiffs prevail, will be the ordering of certain action to be taken. It may be at that time, Your Honor will want to join the Commissioners with reference to the question of relief, not the question of issue before the Court at this moment, but I would think our purpose is to put before Your Honor the condition of the schools and how the

schools are treated with references to the budget both by the Commissioners and, as the exhibits will show, by Congress itself.

MR. REDMON: If Your Honor please, the final determining factor in terms of money being expended for District of Columbia affairs resides in the United States Congress. This Court nor Commissioner Tobriner nor any of us can make and determination with respect how they are going to spend this money. The Commissioners are accountable to Congress. I say again, if we are going to attack this particular area which I maintained is totally irrelevant, the Board of Education is submitting requests and is not getting everything it is asking for. I think we should stop the testimony at this point.

THE COURT: I think if it is helpful for your side we ought to have it in.

MR. REDMON: I don't care to have it in.

THE COURT: I am interested in having a picture. I don't know why you are resisting so strongly; the fact you are resisting makes me wonder why. Since it would help you to have it in we should have it in.

MR. REDMON: It is irrelevant, Your Honor. Congress appropriates the money and none of us are going to make a determination how they are going to spend it.

THE COURT: Would it be difficult, Commissioner, to get up on a sheet of paper showing the requests for the last five years made by various departments -- Welfare, Police, and Board of Education-- the cuts that, or the excesses that you Commissioners allow, and then what the Congress appropriated, would that be very difficult?

A It would take a little time but we can do it.

THE COURT: What do you mean time?

A Maybe a week.

THE COURT: Welfare, Police, and Board of Education.

A Yes, sir.

THE COURT: And if you will simply send that over here that ought to be sufficient. I don't know that we ought to go further. What else, Mr. Kunstler?

MR. KUNSTLER: Just a few more questions, Your Honor.

Commissioner Tobriner, in your testimony before the Task Force Committee -- Subcommittee on Poverty-- do you recall being asked a question which had to do with the 1966-67 budget

being different than the other budgets in the past?

A Would you read me the question?

Q Yes, I'd be happy to. The question was a long question, I will read you a portion of it. It is on page 395, was a question by Mr. Pucinski. Question: Now I am hoping when the next budget comes along, Mr. Commissioner, the school people and you are going to get together and give this Congress what you honestly believe is a bare-bones budget to meet your basic needs. If Congress wants to trim it, let them take the responsibility. Tobriner: I think you will find the 1967 budget is along those lines. I cannot tell you what it is because as you know, it is confidential in the Bureau of the Budget.

Do you remember that question and that answer?

A Yes.

Q Now, is that budget, which I assume has been submitted now and is no longer confidential, is that correct?

A Right.

Q Is that budget a different budget in the question of money than the previous budget -- substantially different than the previous budget? Are you prepared to read into the record what that budget is?

A The 1966 budget provided for school operating expenses. Let me say the Commissioners recommended 309 million in '66 and 334 million in '67. The capital outlay budget in 1966 as recommended by the Commissioners was 80,571,000 and in 1967, 83,161,000.

Q What is the difference between the total budget for 1967 and the total budget for 1966 in millions?

A The 1966 total budget aggregated 395 million -- I am not reading the odd figures, and the 1967 budget 423 million.

Q And does that 1967 budget reflect your --

A I am sorry, those figures are completely wrong. Those were the figures for the total District of Columbia budget. May I refer to the school budget? Yes, I'll give you the total. The 1966 budget recommended by the Commissioners was \$107 million. Final appropriation by Congress was \$93 million. In 1967 the total school appropriation recommended by the Commissioners was \$115 million -- the Congress has not yet acted on the 1967 request.

Q Thank you. That \$115 million I presume reflected realistic budget that you refer to in your testimony, is that correct?

A It reflects the budget with our consideration that was submitted by the Board of Education, doesn't grant the full budget but reflects our feeling what was necessary under the circumstances.

Now, many of these cases I would like to point out, are cases in which --I won't say many, but a number of instances-- where our budget office has cut a budget, the schools will not appeal certain items, so they will accept then the judgment of our budget office. In other instances for example, capital outlay, where there is included in a single request funds for site acquisition, plans and specifications, construction, and equipment in a single year. Our board has denied the latter request because we know that is impossible to acquire the site and build on it and to make plans and specifications and built on it and obtain equipment for it within the single budgetary year. So these requests then are deferred to a subsequent year and in one year we'd probably grant site acquisitions and plans and specifications, in the next year we'd grant construction and equipment money.

Q Just a few questions about the appeal situation. How many appeals do you normally get from the Board of Education?

A Single appeal on a number of items.

Q You know how many last year, how many millions of dollars involved in any particular appeal?

A No, sir.

Q No figures on that?

A No, sir.

Q None available?

A Well, available but I don't have them.

Q Is it possible to submit them when you submit the other material on figures for the last five years in dollar value?

A For the last five years I think it would be very difficult. Maybe the last two or three years.

Q I would accept the last two or three years as to how many dollar volume involved in appeals from the Board of Education?

A Appeals and those cases which have not been appealed -- you want both?

Q All I am concerned with are the appeals. The rest I assume have not been appealed. Let's say there have been appeals on items totalling \$8 million. I'd like to know just the dollar volume involved.

A Last three years?

Q Last three years. Just one or two more questions, Commissioner Tobriner. Outside of the taxes which you have testified to, those approved by Congress and those which you have control yourself, you also have the right to borrow from the Treasury, do you not?

A Yes, sir.

Q And have you exercised that right since you have been on the Board of Commissioners?

A Yes, sir.

Q Do you remember when that was done and how much borrowed?

A We borrow every year.

Q Every year?

A Yes, sir, and incidentally, Congress again must authorize the right to borrow although there is a borrowing limit.

Q What is that limit?

A The current borrowing limit is \$175 million. Current borrowing limit is \$225 million of which \$50 million is earmarked for mass transit purposes.

Q That is not an annual borrowing figure you cannot go beyond?

A That is correct.

Q You do know at what level you stand now?

A I think we have a balance -- I can't tell you, I can supply that later.

Q Maybe you can supply at what level of borrowing the District now stands?

A After the '67 requests have been granted.

Q That is all right for my purpose. You have, as I understand, no authority to float bond issues, do you?

A That is right,

Q Has there ever been permission granted to float a bond issue by the Congress?

A I think prior to the Civil War, but not since.

Q Not since?

A Not since.

THE COURT: Are you almost through?

MR. KUNSTLER: I am almost through, Your Honor, just one or two more points.

Commissioner Tobriner, as I understand from your testimony in the Pucinski Committee the Police in this city are in your opinion the fourth best paid in the country, is that correct?

A If I so testified, I testified from tables, and that would be correct.

Q That would be correct? And there are, as I understand it, more police authorized than you presently have?

A That is correct. There is a vacancy of about 200 police.

Q Lastly, Commissioner, as on the last budget submitted to you by Dr. Hansen and the School Board, that budget was submitted sometime --that is the '66-'67 budget by him-- was submitted sometime toward the end of 1965, is that correct?

A That is right, roughly in October-November.

Q And is it not true that at that time Dr. Hansen stated that this was what he called an ideal school budget and one which would permit him to make all the changes and additions and improvements that he felt were needed?

A I have no recollection of that.

Q I show you an article in the Star on January 13,

1955 --

MR. REDMON: May I object to this line of questioning, Your Honor? We have Dr. Hansen here, he can answer the question.

THE COURT: I think we are going far afield.

MR. KUNSTLER: If he doesn't recall I will withdraw that question.

THE COURT: The witness has to leave.

THE COURT: Commissioner, you are excused, you may leave.

A Thank you, sir.

THE COURT: Counsel, you can recall the Commissioner any time you want to.

A Thank you very much.

THE COURT: Thank you, sir.

(Whereupon the witness left the stand.)

THE COURT: Would you take the stand, Dr. Hansen, please, sir?

Whereupon,

DR. CARL HANSEN

resumed the witness stand, and having previously been sworn, was examined and testified further as follows:

FURTHER DIRECT EXAMINATION

BY MR. KUNSTLER:

Q Dr. Hansen, when we finished yesterday, we had been taking the track system through its various routes and as I believe when we ended we had just come to the testing prior to junior high school and that was the testing as I believe you testified to that, took place in sometime during the 6th grade, is that correct?

A That is right.

Q And do you know what month in the 6th grade that generally took place?

A I'd hazard a guess -- I think it would be better for me to see the chart or calendar which I had with me yesterday.

MR. REDMON: Did you give that to us, Dr. Hansen?

A I think I returned it to somebody.

BY MR. KUNSTLER:

Q While they are looking, Dr. Hansen, if I said it occurred sometime around March, would that seem to fit your recollection?

A I suppose so. The testing schedule is staggered. Let me wait till I get the data here. Do you understand a testing schedule is staggered in order to make it possible for the testing department to avoid overwhelming peaks of testing activity. The tests were given in February -- late February, early March to the 6th grades.

Q And these tests are given on a city-wide basis, is that correct?

A That is right.

Q And as I believe, we got to the point yesterday where I asked what tests were given and you answered, I believe, Stanford Achievement and Otis Mental Ability for all except basics?

A This I did.

Q When we closed yesterday I thought we were somewhere talking about the basic tests and I think you said they were given Metropolitan Achievement test, the same test given the fourth grade, is that correct, as well as the Toga?

A In the fourth grade the sequential test of educational progress were given this year rather than the Metropolitan used the year before.

Q Sixth grade students this year would have taken the Toga rather than the Sequential, isn't that correct?

A That is right.

Q They also are given tests of general ability which we call Toga, isn't that correct? These are basics, this sixth grade?

A Right.

Q These tests go through the same route as the fourth grade test for scoring as you indicated some are scored in the District, some are scored by the contract testers?

A Possibly.

Q Then they are returned to the District, is that correct?

A Correct.

Q Then they are all matched up sometime or other after the tests, they all come back in somebody's hands?

A In the District hands, yes.

Q Then they are evaluated by the District?

A Test results are distributed to the schools from which the tests came and a summary of concluding collation of the facts made.

Q Now the tests come back with some sort of a grade on them you call an IQ grade or what have you. They come back with some sort of easily ascertainable standard grade?

A Correct.

Q Then fall under the jurisdiction of the principals, is that correct?

A For use in counselling.

Q Not solely for use in counselling, they come up for another reason don't they?

A They are used, I am sure, to evaluate the success of the program but the main objective is for counselling purposes.

Q Do they have any use, Dr. Hansen, with reference to evaluating? Let's talk about the basics for the moment, evaluating whether the basics should go to another track. Are they used for that purpose?

A The test scores would be a factor.

Q It would be a factor? Are the test scores also used to determine whether anybody, for example, in an honors track should go to regular or from regular to basic?

A Again, a factor. It could be a factor.

Q What are the other factors? You have the tests, the group tests. What about individual tests?

A You may have individual tests when requested. You will have the scholastic record of the individual, his grades earned in the subjects, evaluations of teachers, judgment of teachers as to problems, or possibilities or potentials, health records enter into the counselling process because for example, if a child is not strong physically or seems to be under difficulty emotionally, that child may not be recommended say for the honors curriculum which is very rigorous. So I say health factors, mental health factors are given consideration by counselors, attitudes of parents. We like to have the parents subscribe to placement of the child in the honors curriculum. For example, we don't want this done with the parents being uninformed. The parents must approve the assignment of a child. So all of these factors enter into counselling process.

Q Does every child get any individual psychological testing or that only done at request?

A Only done at request. Unfortunately, we don't have the resources for that.

Q That would be the request of the principal or teacher?

A Request routed through the principal to Personnel Services Section.

Q So it is safe to say some children who are judged on the basis of the group tests do not receive psychological tests --individual psychological tests-- isn't that correct?

A That would be correct. But I resist the question or judged on the basis of achievement test, sir, because other factors are brought into any evaluation.

Q Now, Doctor, is it your knowledge that after the sixth grade tests are given, the group tests, and after this reevaluation which you described takes place in various schools, talking now about elementary schools, that there is some movement from track to track when those students get into the junior high school the following September?

A Very likely that this is a point in which special care is made to decide whether a youngster should be moved up into the general track from the basic, moved up into a

regular program from the basic, or whether he might move from the regular program to the honors program.

Q You have any idea of the percentage of movement from the, say the basic, to the general track?

A I gave you figures yesterday which unfortunately I haven't had a chance to check, something over a hundred youngsters apparently in one given year removed from basic track in elementary schools and a period over two years, over a thousand junior and senior youngsters were upgraded from basic to the regular curriculum. I have this kind of information which is authenticated and reported to me by heads of departments.

Q Let's stay with elementary schools for a moment because we haven't reached the others. You talk about a hundred making the movement from basic to regular. What are you talking about in terms of percentages?

A Suppose we take an estimate without checking the figures of 2400 elementary children, grade one thru six enrolled in basic curriculum. Then if 115 of those are moved upward in the course of a year, the percentage would be what -- about 5%.

Q About 5%? And is that true every year or is that one particular year you have in mind?

A This is one particular year. I have not gotten a report for this year.

Q Are any figures kept on this, the movement from basic to general, or general to honors, with reference to the elementary schools when children reach junior high school level?

A Principals have these figures in their records and on occasion, particularly when we are making evaluations we ask for reports back. We have not asked for a report this year because frankly, we are already overburdening our staff with informational requests of all kinds. We think we have enough data on hand to satisfy us that there is flexibility in the operation of this program and I don't propose to put our principals to busy work when they have many important things to do simply to satisfy the routine requests for information syphoned into my office.

Q You consider it routine the question of whether children are moving up or down in the track system?

A This is a question left to the principals. They are authorized under Board rules to run their schools. I make an occasional check as an example, I have done this as I have said two years running, but not for last year.

MR. KUNSTLER: Mr. Redmon, I would like to ask if you have those figures available, as I indicated we didn't have them?

WITNESS: I can answer that. The report on the track system which I have in my materials and will supply and verify the figures which I am giving you, if you will allow us to do that.

MR. KUNSTLER: They are in the courtroom?

A In the courtroom with my material.

Q That would be the flexibility of the elementary school pupils?

THE COURT: Dr. Hansen, if you had those materials could you testify to them now?

A Yes.

THE COURT: Suppose you get them so we can change reporters.

(Changed reporters.)

BY MR. KUNSTLER:

Q Dr. Hansen, does the material you have in your hands reflect an official document of your office?

A Yes.

Q This is a document called "Review of the Track System of the District of Columbia"?

A This is a document called "Review of the Track System of the District of Columbia" which I prepared and it is over my signature.

Q I see --

A I actually prepared it, of course, from materials gathered from various parts of the school system which was presented to the Board of Education January 13, 1964.

Q And does reflect the flexibility or the mobility that we have been discussing prior to the change of reporters?

A It does.

Q Does it reflect it by school?

A It does not. These are general statistics.

Q General statistics -- does it reflect it by race?

A It does not.

Q For how many years do you have material there indicating the amount of flexibility grades one to six?

A Grades one to six for the year 1962. May I make

the presentation I have here?

Q Yes.

A In 1962, 119 elementary school pupils were upgraded from basic track.

Q Of how many who were in the basic track at that time?

A I don't have the record as to enrollment at that time. Somewhere I think I have the enrollment. I think it is in the set of papers.

Yes, I have the 1962 to 1963 enrollment which is the year being referred to here. 2,770 elementary youngsters in the basic track, this being 3.7 per cent of the total enrollment at that time.

Q You have no figures here for the record as to whether all of the children, those 2,770 children in the basic track in that '62 to 1963 period -- or is it '63 to '64?

A '62 to '63.

Q '62 to '63 were given individual psychological tests?

A No, sir. I have no figures here. I know from my general knowledge that the elementary school principals were particularly careful to get examinations so that many of their children were individually tested and evaluated by the Pupil Personnel Service of the Department before placement in this

track, but not all of them.

Q But not all of them?

A Correct.

Q You have no idea of what the percentages were, of how many were given individual tests?

A None, except I get the impression that a large percent were so tested.

Q All right, now. Do any of your figures indicate the movement, for example, downward from say honors to general in that same school year?

A Not for the elementary grades on that question, on the question of flexibility, I don't have.

Q What about general to basic?

A I don't have that information.

Q What about general to honors?

A I don't believe that they give that -- let's see.

What I do have, and I would be glad to make this report available to you, counsel, if you haven't seen it, if you want to enter it in the record, but I have the basic enrollment, number of children present in the elementary schools from 1959-60 to 1963-64, inclusive, and this shows a fairly even trend which would suggest that the amount downward in the main has been balanced by the amount upward.

I think the 1963 to 1964 figure is somewhat lower, not significantly lower -- only about 100 lower than the preceding year.

Q Dr. Hansen, do you have available in your office, and I think you indicated that you did, the complete figures as to the track flexibility with the exception, I believe you said of last year when you no longer wanted to burden the principals, I think you said,

A Mr. Kunstler, I told you that the last I have is contained in this document.

Q That is the last report?

A That's right.

Q That would be the sole information that you would have in connection with the flexibility situation?

A This is all I have, yes, and as I have already explained, I didn't ask for that information for this year for the reasons given.

Q Well, what I am trying to ask, Dr. Hansen, is this: Outside of this document that you have in your hands, are there any other documents in your office which would reflect the mobility of elementary school children, up or down, with the pre-track system under which they operate for any of the years, since, say, 1961, either as a lump figure, or by

school or by race?

A I have given you the last report that I have.

Q There is nothing else in your office?

A That is right.

MR. KUNSTLER: Well, I would like to offer this in evidence, Your Honor.

MR. HANSEN: Before you take it, I assume you are going to take the junior high schools, are you not?

MR. KUNSTLER: Yes, all right. Well, hold onto it, then and we will get to the junior high schools.

BY MR. KUNSTLER:

Q Now, we have approached the trail with the student entering school until he reaches eighth grade -- pardon me, sixth grade, takes the sixth grade test, and then as you have testified some re-evaluation is done, some flexibility occurs and then he goes to junior high school, is that correct?

A That is partially correct. Evaluation is a continuous responsibility of teachers and of course this applies to all pupils and there is a special responsibility of the teacher for the basic program so that if what appears to be a badly placed pupil is ready for movement to a more difficult program, the teacher may recommend that change at any time.

I make this point, Mr. Kunstler, so that there would not

appear to be a situation where nothing is done about evaluation on these children's development except at periodic times over a course of years. This is a continuous operation.

Q No, I am not implying anything like that, Dr. Hansen.

Now, the children enter junior high school and I presume they continue in the same track that they were in in the sixth grade with the exception of those who have changed due to flexibility which you have indicated, is that correct?

A There is a tendency, of course, for the child to be programmed consistent with his elementary experience.

This is a deliberate effort on the part of the junior high school principals and the counsellors who work with the sixth grade teachers to place the children in the seventh grade.

Q Well, is that an answer of yes to my question?

A It is an explanatory answer, yes.

Q But in essence it is yes, is it not, that they continue in the same grades into junior high school subject to any changes of flexibility that we have mentioned -- the hundred or so that we mentioned?

A The answer is not yes. The answer is that each child's program is individually programmed, individually prepared, with the cooperation of the junior high school

counsellors before he enters into seventh grade.

Q All I am asking you is this, Dr. Hansen: Essentially with almost every student when he leaves sixth grade to enter one of the junior high schools around the City, with rare exceptions, a child that was in special academic or basic track goes into junior high school in the same special academic track or basic track, is that not correct, as a general rule?

A I would presume so, yes.

Q Now, when they enter junior high school, then, let me ask you this one further question: There was a time, Dr. Hansen, when you did not require any parental consent towards the placement in, for example, basic track, is that correct?

A That's correct.

Q And then there was a change in that policy, as I understand it?

A That's right.

Q And now you require consent, is that correct?

A Yes.

Q When did that change in policy take place?

A It was effective September.

Q Of last year?

A Yes.

Q Now, this permission, is it required of all parents

of all pupils, or is it confined to certain schools or grades, for example, only high school parents, junior high school parents, or what?

A This is an obligation for the programming in the basic curriculum in all schools at all levels.

Q So when a position has been reached through this evaluation and the decision is made to place a child in the special academic track, for example, the child's parents are called in, is that correct?

A That is correct.

Q And who does the child's parents consult with on this?

A The counsellor. Possible the principal if it becomes a question involving the principal.

Q Is the parent told that it is in the school's opinion, the principal's opinion, the teacher's opinion and the counsellor's opinion that the child would be better off in the track basic system?

A I would expect so.

Q And this has been done since September of 1965, is that correct?

A That's correct.

Q And do you know offhand how many parents have objected to the placing of the child in the basic track?

A I have not asked for a report on that. My impression is that relatively few have voiced objection.

Q Do you know if any have?

A I think one or two I know of have.

Q So in the main the parent is content to abide by the recommendations of the school, the counsellor or whoever it is who is representing the school at any particular time?

A That is right, and I would like to make an explanation here which I think is pertinent for the record. Keeping in mind that no child is considered for programming on the basic track who is successful in his regular program, then a child is in trouble is he is not keeping up, he is getting failing grades and he is behind in his work -- sometimes he has emotional behavior difficulties as a result of his inability to function in a regular program and this is a condition precedent to any action of moving the child to a special placement.

I want to make that extremely clear that special placement of any kind, and we have several special programs, always follows difficulty in the regular placement.

Therefore, the parents are aware of the difficulty and they want help -- they want the help of smaller classes, classes of 18 rather than classes of 30; they want special attention that their children may get in the smaller class and

they are seeking this help from the counsellor and therefore I am not surprised that most of the parents have accepted placement.

Q Now, Dr. Hansen, now that the children are in junior high school, the parents have given their consent for the basics, do you require, and I imagine you do, consent also for honors as you have indicated?

A We are not quite as inflexible on that, but from the very outset we have said to the principals: "You will be very wise to get the concurrence of the parent for the placement of the child in the honors curriculum."

Q What about regular -- do you require parental consent for that?

A There is a general program of sending home the proposed program for all children.

Q The parent does not have to consent, though, for regular, does he?

A -- for review by the parent and concurrence by the parent. If the parent refuses to concur, then of course, the school principal has the authority to overrule that nonconcurrence, but my point is that the programs, as they are made out each year, go home for review by the parents before they are finalized in the school.

Q Is it not true that on the regular, Dr. Hanse, if a parent says nothing, doesn't say, "no", or "yes", that that would be construed by the school as concurrence?

A That is true and ordinarily there is a place on the report that goes to the home for the parent to indicate his concurrence. If this is not done, if nothing is done, nonetheless, lack of dissent is considered as concurrence.

Q Just to put it very simply, it is only in the basic track since 1965, September, that the consent of the basic track student, or prospective basic track student parent, is required?

A That is true.

Q Now, if the parent does not consent, then what happens?

A Then the child should not be placed in the basic track and then they should be given the best possible placement in a regular program.

Q To the best of your knowledge, has that ever occurred?

A As I have said, I think that a limited number, perhaps as many as two or three, that I know of, have refused to accept placement. This is only information that I have picked up in conversations with people as I have asked about the effect of the ruling.

Q You do not require a report --

A I do not require a report.

Q -- as to whether the parents consent, or do not consent?

A No.

Q Now, the children are in junior high school and taking up the various courses in junior high school, in the various grades, and is it not true, Dr. Hansen, and you correct me if I am wrong, that there are many more, or at least substantially more children in the basic track in say junior high school than there are in the elementary school -- in other words the per cent is higher?

A The per cent is higher.

Q And this is also true of high school, is it not?

A That is correct.

Q Now, you do keep records, do you not, of racial composition of the basic students in the junior high schools?

A We have one annual count by race. This is in October, allowed specially by the Board of Education.

I am not aware of a racial count by any other type. If any other type of racial count is being made, this is then being made without the concurrence of my office.

Q Dr. Hansen, I show you Exhibit B-5 for the plaintiff and No. 8 for the corporation counsel and I ask you if this is the latest result you have had statistically as to the track

populations of the junior high school?

A This is the latest one and it is by race.

Q By race only in the basic track?

A That is correct -- no, not by race -- apparently in regular and honors --

MR. REDMON: If Your Honor please, I would object to these other people sitting at this table and shaking their heads yes or no when the testimony is being given and I would ask Your Honor to order them to stop it.

THE COURT: Well, I am at a loss -- yes or no to what?

MR. REDMON: Well, we have this lady sitting here waving her head yes or no when Dr. Hansen is testifying and I do not think it is proper.

THE COURT: Well, I think it would be proper for her to desist if that is the case.

MR. REDMON: Thank you, Your Honor.

THE WITNESS: So therefore I am misinformed on that.

BY MR. KUNSTLER:

Well, Dr. Hansen, I think you are misinformed -- you don't keep it by race on the regular and honors, do you -- you just have it mixed up white and colored together, is that not correct?

A I must say that this is the first that I have seen of

this and I am not sure by what authority it was done.

MR. KUNSTLER: I would offer this into evidence, if Mr. Redmon has no objection, -- it is Corporation Counsel's No. 8.

MR. REDMON: No objection.

THE COURT: B-5 is admitted into evidence.

(Whereupon, Plaintiff's Exhibit No. B-5 and Corporation Counsel's Exhibit No. 8 was received into evidence.)

MR. KUNSTLER: If the Court please, for the record, I would like to indicate that B-5 indicates only a racial breakdown for basic track in the junior high school and not for any other of the tracks.

BY MR. KUNSTLER:

Q Now, Dr. Hansen, as I understand it, on the junior high school level under your system there is no what we call cross-tracking, is that not correct?

A The junior high school level has a block system as a common practice long before we organized anything of what we call the track system, and on that basis the answer is yes, except that I may say, with limitations, with exceptions.

Q Would you illustrate for the record what cross-tracking

is?

A This is an individualization of a program -- a youngster for example may be taking regular program and he may be qualified for and desire advanced work in mathematics and he may want to take the evaluation in the program which is part of the college preparatory sequence. He will therefore be programmed in the mathematics level and he may go as far as the calculus or the trigonometry and so forth, and yet be in the general track otherwise.

Children may be programmed in what we call the basic curriculum and may be completely and essentially in the basic curriculum, but may be assigned to courses in the regular mathematics program if they have the ability for this program.

Q And that is what cross-tracking is, is that correct?

A That is what cross-tracking is. That is cross-tracking.

Q Does cross-tracking exist, as you have defined it, in junior high school for those three years, grade seven, eight and nine?

A Well, I think the block system needs explanation --

Q Would you explain what the block system is?

A The programming tends to limit what is called cross-tracking, yes. For many years the junior high schools have used a form of ability grouping, setting up sections that

reduced the ranges of differences, from A to Z and from one to 25 and then as the sections are developed through the home rooms, they move out of group through the English, mathematics, social studies programs, primarily the basic subjects, and then they shift to home economics, shop, and possibly art and music.

Q Just to clarify one thing in your answer just a minute ago, when you started to speak about the junior high schools, you indicated that the percentage of basics goes up from sixth to seventh grade. Is this as a result of the sixth grade testing that this takes place?

A Well, --

MR. REDMON: I object to that question, Your Honor. I think Dr. Hansen testified that the percentage of basics in junior high school refers not to sixth, but seventh grade.

MR. KUNSTLER: Well, that is junior high school.

MR. REDMON: Well, are you referring to the total for the grades? I think you are misrepresenting the facts.

THE COURT: Rephrase the question.

MR. KUNSTLER: All right, I will rephrase the question.

BY MR. KUNSTLER:

Q Is there a difference in the number of or percentage of basics between seventh and sixth grades?

A There is, yes.

Q And there are many more basics in the seventh grade than there are in the sixth grade percentagewise, is that not correct?

A I don't have that information breakdown in the grades.

Q Then all you can testify to is in the junior high school as a total of the three grades, is that correct, seventh, eighth, and ninth?

A Well, in the percent of the elementary school, the total of the seventh grades; we have a statistical problem here, as you can well understand, that in the first place we have a range from kindergarten through ~~Eleventh~~. The percentage therefore is related to a larger base and we have relatively few of the first and second graders in basic.

I am pointing this out so that we do not take an unqualified statistical figure that might lead to an improper interpretation, an error^s/_{interpretation}, unless the background of the statistics ^{is} explained.

Q Well, I will ask you this question, without, then, limiting it to statistics, is it not true to your knowledge, Dr. Hansen, that many elementary general track students become seventh grade basics?

A I would assume so, but I don't have the data to support this conclusion statistically.

Q That is the only thing lacking, that you don't know the percentage or the number to put into the record on that score?

A I am making a presumption.

Q Would that information be in your office?

A Sir, it could be dug up with extensive labor.

Q Is it possible to put into the record in this case that figure by number or percentages of the sixth grade general track students who, when they enter junior high school seventh grade, go in at the basic level?

A For what particular year?

Q Well, you have a figure of 100, I believe, going from basic to general which you mentioned for one particular year.

A 1962 to 1963.

Q All right, would you have the same information as to those going from sixth grade general to seventh grade basics?

A It would mean going back in the files and records of 20,000 boys and girls who made the transition.

Q Let me ask you this and maybe we could save a little of the digging if it is possible: You have estimated, I believe, a figure of 100 going from basic to general at this sixth to seventh grade transition. Would you care to estimate, again for 1962 to 1963, would you care to estimate how many go the

opposite route from general in sixth grade to basic in seventh grade?

A I didn't estimate the 119 figure. That was an actual figure gotten by research.

Q All right. Do we have the other?

A No, I could not approximate the number. I can only refer, as I did when you raised the question earlier, to the fact that there seems to be a pretty consistent level of basic enrollment in the elementary schools and as I said at that time it would appear that the movement up and the movement down would tend to counterbalance each other so on that basis I would say perhaps relatively the same.

Q Now, Dr. Hansen, when the children are in junior high school through the seventh, eighth and ninth grades, are there any group tests administered prior to their entering high school?

A Yes, the children are tested in the ninth grade.

Q Do you know what tests are given in the ninth grade?

A Well, in general track the pupils are given step tests which is a sequential test and vocational process and school and college ability tests are given, and for the special academic there is a Stanford Achievement Tests, Intermediate Partial Battery Form W, and the tests of general ability are

given.

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In addition, there are a number of optional tests to be given if the principals wish to do so.

Q But the basic tests that are given in the ninth grade are what we would call Step Tests, Step Achievement Tests and SAT ability tests, is that correct?

A I have just put that in the record.

Q And honors and regular are the only two tracks that receive these tests, is that correct? That you have just mentioned?

A That's correct.

Q Now, the basics also get tests, don't they?

A Yes, sir, I have just said those.

Q That is the Stanford and the Toga which were the same tests, were they not, that you had in what was it, the same tests that they had in sixth grade basics?

A The sixth grade for the last year took the Metropolitan Basic -- Metropolitan Reading and Arithmetic tests.

Q There is a difference between the tests given in the ninth grade, is there not?

A Yes, sir, but it would be, to be more precise I would have to go back over the years to find out what last year ninth grade basics took in the way of tests. I simply point out that the information we have here for the sixth grade would

not pertain to last year's ninth grade when it was in the sixth grade.

Q I see.

A There may have been another test given.

Q Dr. Hansen, while the children are in the junior high school, these three grades, do you know of your knowledge whether there is any movement between tracks in the junior high school?

A Yes, sir, I do.

Q Do you have any figures on that?

A I do. Now, I am reading again from the last report, overall report, for the Board of Education on the track system from September 1961 to September 1963. In the junior high schools 670 pupils were reassigned from basic to regular track -- the movement between all tracks involved 1,683 pupils.

Q Do I understand that out of 1,683, 670 were from basics up to regular, is that correct, or basics to general?

A That's correct.

Q And that the rest were fluctuations between the other tracks, either reflecting -- the difference between the 1,683 and 670 which is about 390 would reflect someone going down into basics from general --

A Yes, sir, it would do that and also some going from general to honors and honors to general.

Q Do you have any figures of how many went from basic, or rather down to basics and how many went to honors?

A I do not have that broken down.

Q Dr. Hansen, as far as this mobility that we were discussing is concerned, and the 670 that you refer to, what year did that take place?

A These were in the years from September 1961 to September 1963 -- a period of two years.

Q I will rephrase my question. What school year did it refer to, sixth, eighth, or ninth?

A All.

Q All?

A Junior high school grades.

Q Now, there is no test given in junior high school, no group tests anyway, in the last year of junior high school, is that correct?

A That is correct.

Q My records indicate that that is in November, at least, of last year, would that coincide with your records?

A Actually, October.

Q October. Now, your records do not indicate how many of these changes upward or downward took place after October of the ninth year?

A They don't.

Q What standards would be used prior to October of the ninth year as to change one way or the other?

A As I have already said now we rely on the general evaluation of the pupils progress, judgment of teachers, grades made in school, response to examinations given by the teachers, performance as judged by the regular and academic work done day by day, by the teacher. I have said in the past and I want to say it here again, sir, that the teacher knows a great deal more about the pupil than a test could ever show.

A test is only a factor in the events, a direction finder for further study.

Q So it would be on these factors that you have indicated that movement would occur?

A That is correct.

Q And as you have said, to put it in the record several times, and I wanted to ask you one other question while on the subject of testing, Dr. Hansen, is it a correct statement to make that in order for a person, a student, to get into one of the five vocational schools that he must have an IQ of 95 -- is that correct?

A No, admission to the junior high school is based primarily on achievement tests which are given for the special

purpose of making an evaluation for admission, but also flexibility of judgment allowed the principal and counsellor.

Q Well, does the figure of 95 have any relevancy to what we are discussing, Dr. Hansen?

A No, not in my mind, in my context of information. It may be that you are right, but I don't have this kind of information.

A special test is given for admission to the vocational high school which does not produce an IQ.

Q No, the question I am asking is whether a 95 IQ is a prerequisite for admission to vocational school?

A I am saying on the basis of the general knowledge that I have that this is not true, this is not a factor, but I cannot be precise in my answer.

Q Well, is it correct to say that you have in the back of your mind a feeling that an IQ of this nature is required?

A No, sir. It simply means that I don't have the information in this particular instance to supply an unqualified answer.

Q Is it possible to get that answer?

A Yes, indeed.

Q Would you get it and supply it for the record?

A Yes, if we have it.

Q Now, my next question is this: Is it true that any IQ standard is required for any student to take remedial reading in any aspect of the District of Columbia School System?

A Here again I am going to have to be somewhat general in my response because I am not fully acquainted with all the types of remedial programs being conducted by principals in schools.

There is no general policy from my office, if I may answer you that way, which specifies a certain IQ for admission to a reading clinic, or for admission to special classes in reading.

I should be very much surprised if this were the case, because the problem of reading, while co-related with IQ's, the sequence has no correlation and an extremely high score may exist irrespective of IQ level.

A youngster in a test may score very well, but be unable to read so I am going to have to answer that by saying that I strongly doubt that the IQ is the sole factor for admission to a special reading program.

The main factor is level of reading or difficulty in reading.

Q But my question is, for example, for remedial reading is an 85 IQ one of the factors that is required?

A I would have to answer no.

Q Dr. Hansen, do you know of your own knowledge whether any basics are in vocational schools?

A You are talking here now about, say a ninth grade pupil who has completed basic curriculum -- has he been admitted in any case?

Q That is when the vocational schools start, at that level?

A Yes.

Q Well, that is what I am talking about.

A I don't have that information.

Q Do you know whether any basics students throughout the school system are in remedial reading classes?

A I'd answer yes to that because the heart of the special academic curriculum is reading remediation. This is the heart of the program.

Q Dr. Hansen, while we are on the subject of junior high schools, it is true, is it not, that in some of the junior high schools there are no basics whatsoever, is that not correct, and I will refresh your recollection by showing you Exhibit B-5?

A In this record it would appear that the Deal school does not have a basics or special program, also.

Q And I think you testified before that Deal is what we would consider a predominantly all white school, is that correct?

A Predominantly, yes.

Q Dr. Hansen, after the junior high school grades, sixth through nine, then a student goes into high school, is that not correct?

A Yes.

Q Now, in high school you get into the four track system, is that not also correct?

A That is correct.

Q And as I understand it, and please correct me if I am wrong, in high school you had in essence two college preparatory tracks which would be, as I understand it, honors and regular, is that correct?

A That is correct.

Q And then you have the general and basics?

A Yes.

Q And these are non-college preparatory tracks?

A Well, this qualification needs to be supplied that many colleges do not require -- we require college preparatory programs for admission, for example, they waive requirements in foreign languages so that there are members of the general track

who are admitted to two year and four year colleges on the basis of their records.

Q All right. Now, as I understand it, if a person is an honors track student, or if he is a regular track student, which are the traditional college preparatory tracks, is that correct?

A That is correct.

Q As far as you are concerned, your courses are geared so that they can get into, assuming their grades and other qualifications measure up to standard, so that they can get into the colleges of the United States, is that correct?

A The program is geared to that purpose, but it has other purposes as well.

Q I understand, but the point is that the courses given, the courses which are prescribed in both regular and honors tracks, are geared to the requirements of most American colleges, is that not correct?

A That is correct.

Q In fact, when your Curriculum Department prepares the required courses this is done after consultation with the persons responsible for requirements of colleges, is that not correct? Or with that in mind?

A This is essentially correct.

Q As I understand it, you have an honors track in which the student has to take a certain number of credits in order to graduate?

A He has to contract, in a sense, to complete 18 Carnegie units.

Q And of these, as I understand it, some 16 1/2 units are prescribed?

A That is correct.

Q So he only has a choice of 1 1/2 electives?

A Within the scope of 18 units.

Q And as far as the regular track is concerned, the second college preparation track, you have much the same thing except that you have a situation where more electives can be taken, is that correct?

A That is correct, and only 16 units are required for graduation.

Q Sixteen units are required for graduation and how many of those are electives?

A Thirteen and one-half I believe are required.

Q Are prescribed?

A Yes, sir.

Q Now, when you --

A Before you leave that point, let me point out that

two factors prevail, one is that we have moved some of the required college preparatory courses into eighth grade. This is true of a foreign language program and of algebra so that the youngster has a wider span of time in which to build his 18 or 16 units. That is factor number one.

The second factor is that the students have an opportunity to take more than the required 16 units. For example, -- or required 18 units -- many take as many as 20 units.

Q Well, these are the minimums that we are talking about?

A These are minimums.

Q And when you say 18 units, you are saying that he must take the following courses and then you list a certain number of courses, English and so on, foreign languages, mathematics --

A That is correct.

Q And then you have a leeway as to at least 1 1/2 units to take elective courses, but you can't take as many elective courses as you can stand beyond that?

A That is correct.

Q And then you must complete the prescribed courses?

A That is right.

Q And in regular it is the same thing except that it is

only 16 courses that the student has to complete?

A That is correct.

Q And 13 1/2 prescribed courses?

A That is correct.

Q And the course is geared to the requirements, the most stringent requirements of the best universities and colleges in the case of the honors course, is that not correct?

A I am not prepared to concur fully. The honors curriculum student -- well, I will put it this way: The honors curriculum stands on its own and so, I must say, does the regular curriculum.

We have enrolled and accepted pupils many times that are not going to higher education, college or university as the end of their career -- that is to say this provides a general, good, sound education for business or whatever career they are going into, whether it be honors or general or regular, so I like to think of these programs standing on their own feet and being justified intrinsically at all levels.

Q I realize that, Dr. Hansen, but I am saying that in designing them some consideration is given, let us say, in the honors track to the requirements of the best American universities?

A Well, I am simply amplifying so that we don't have too simple an answer to your question which really is very

profoundly complex.

Q I am trying to, not ultra-simplify this, but I just want to get a general answer, taking a student going into honors track or into regular track, that student even in regular track, will have to complete a number of units sufficient to get into a great many American colleges -- that is the majority of American colleges and universities, is that not correct?

A I have no reason to say that that would be correct.

Q Well, according to your testimony, then, a regular or honors graduate have about the same opportunities to enter American colleges and universities -- there is no difference between them?

A I have not said that.

Q Is there a difference between them?

A There is a difference and I will be content to say that you have already explained the difference.

Q Well, I will accept that. Now, getting to the general track which is essentially the first of the two non-college preparatory tracks, and I think that you have said that some do get into college from these tracks, as I understand it, these students are only required to take 15 units, is that correct?

A They take 16 units.

Q Sixteen units?

A Yes.

Q Now, of the 16 units, is it true that only $8 \frac{1}{2}$ units are prescribed?

A Well, my memory is $7 \frac{1}{2}$, but I wouldn't quibble over one.

Q My figures indicate $7 \frac{1}{2}$, too, but only 15 for the units -- but it is 16 units with $7 \frac{1}{2}$ prescribed, is that correct?

A That is correct.

Q Therefore, a student is free to take whatever else he wants within the elective program?

A That is correct.

Q And you stated before, and I would just like for you to amplify it, that some of the students do get into colleges. Do you know what percentage that would be of the general track people in the senior high school?

A I think our most recent follow-up study shows that percentage which you either have in the files here, or which we could bring to you and I could be specific.

Q You could furnish that?

A May I ask that now, if you want to wait?

Q Very well.

MR. REDMON: I think we have it.

BY MR. KUNSTLER:

Q Well, while they are looking that up in order to save time, I will keep going ahead and we can come back, Dr. Hansen.

A Yes.

Q The basic student in senior high school is only required to graduate with 9 1/2 units, is that correct?

A Sir, you are wrong. No one can graduate from any of our high schools with less than 16 Carnegie units.

Q What are the basic requirements, then, if I may ask?

A Sixteen Carnegie units of which 10 1/2 are specified.

Q I see --

A Now, if I can now present the figure that you have asked me about, from the report presented to the Board of Education in March 1966, having to do with the follow-up study we made of our graduates, 92.9 per cent of the graduates located in the honors program are continuing their education full-time or part-time, 76.8 per cent of the graduates located in the regular program college preparatory are continuing their education full-time or part-time and 31.6 per cent of the graduates located in the general program are continuing their education full-time or part-time.

13.5 per cent of the graduates located in the special academic program are continuing their education full-time or

part-time, eight of whom are in four year colleges.

Q You say eight of whom, you mean eight students from basics?

A That is correct.

Q Are in four year colleges -- do you know what colleges these are?

A No, I don't have the data broken down here, but I have a complete report on colleges where our pupils are admitted and percentages attending, if you would like to have that for the record.

Q Do you have that with you?

A Yes, I can make this available to you.

Q When you talk about the record, are you talking about the entire record?

A That's right.

Q Is this what we call your report to the Board of Education dated March the 16th of 1966 -- is that what you are reading from?

A On the subject of graduate follow-up.

Q Yes, it is one of the parts that starts, "Ladies and gentlemen, the annual statistical report on high school graduate follow-up study"--

A That's right.

Q Thank you.

MR. KUNSTLER: I am perfectly willing that this should be incorporated into the record as our T-2 and Corporation Counsel's 53, is there is no objection.

MR. REDMON: I have no objection.

THE COURT: It will be admitted.

(Whereupon, Plaintiff's Exhibit T-2
and Corporation Counsel's Exhibit
No. 53 was received into evidence.)

BY MR. KUNSTLER:

Q Now, Dr. Hansen, I show you District of Columbia High School Student's Curriculum Handbook dated May of 1962 and I ask you if you are familiar with this document?

A Yes, I am.

Q Is it accurate?

A It was accurate at the time of completion. I suspect that some modifications have occurred since, modifications of course offerings made subsequent to this date of completion, but essentially it is accurate.

Q And this curriculum handbook is the handbook which was produced by the District of Columbia Congress of Parents and Teachers, is that correct?

A That is right.

Q And it has a remark of your, "A splendid contribution"

on here?

A That's right.

Q And that was your remark, was it not?

A That's right.

MR. KUNSTLER: I would like to offer this into evidence subject to the updating referred to, if Corporation Counsel wants to make it.

It would be our G-1.

MR. REDMON: With the reservation that Dr. Hansen has indicated, I would have no objection, Your Honor.

THE COURT: All right. It will be admitted.

(Whereupon, Plaintiff's Exhibit G-1
was received into evidence.)

BY MR. KUNSTLER:

Q Now, Dr. Hansen, getting to the high school, are there any tests administered in the high school?

A Yes, sir.

Q Group tests during the period of the ninth, tenth and eleventh grades?

A In the eleventh grade the Step Test is given to tracks one, two and three and vocational pupils as well as the school and college ability tests.

For the basics track in eleventh grade the Stanford Achievement Test, Advanced Partial Battery Form W are given as

well as tests in general ability for grades nine and eleven.

Q Do you know when the non-basics are tested with reference to the Step and SCAT tests, what year and when in that year?

A In April.

Q Of what grade?

A Eleven.

Q And the tests that are given to the basics students, the ones we have mentioned, the Toga and the Advanced Partial Battery which you have spoken about, are given when?

A April, grade eleven.

Q Now, is there any fluctuation of track, track to track in senior high school?

A There were, during the same period as I have reported for the junior high schools, September '61 to September '63, 351 senior high school pupils transferred from the basic to the general or regular track and 1,721 pupils were moved from one track to another.

Q What was your first figure there, as from basic to general?

A 351.

Q 351 from basic to general?

A Yes, sir.

Q And of the rest of 1,721 you have no figure, no doubt, as to whether they went up or down?

A I do not.

Q As I understand it, Doctor, whereas cross-tracking as you have indicated was limited in junior high school, it is more possible in senior high school, is that correct?

A This is correct because the block system we use, pupil programs are individualized in the senior high school years under our system.

Q Well, as I understand it, if a basics student in senior high school -- and I understand they will be more or less defined as a person who has an IQ of 95 or under or has a history of three years of underperforming, is that correct?

A Yes, sir.

Q That such a student would find it possible, if he desired, to take for example, an honors English class under certain circumstances?

A Theoretically, yes, but a student who is capable of doing an honors English class, I doubt would be assigned to the basic program. If so, this ought to be very carefully studied.

Q Is it not true, Dr. Hansen, that as far as basics in high school are concerned, there is very little cross-tracking

permitted?

A I don't have the figure, but it is permitted. I am not sure what you mean by very little. As I have said, the programs are individualized and a student may be taking a general program in mathematics whereas he is in reading in English in, maybe, the slowest moving group in the basic curriculum. This is something that has happened and is permitted.

Q Well, let me put it this way: In order to graduate from any track whether it be in junior high school or senior high school, is it not true that a student must take all of the classes within that track, all the required courses, rather, within that track. Is that a fair statement?

A There could be a case where he may be substituting for example algebra for general mathematics in the basic and the answer there would be yes, except for the variation.

Q I would just like to correlate that with what you had just told us about high school where you say that cross-tracking is possible which would mean to me that the student in the basic track in high school could theoretically, as I believe you put it, take a course in a different track, general track, or regular track, or the honors track. We will get to how that could be done in just a moment, but wouldn't that mean that he would not be taking all the courses within his track

required for graduation?

A It could have that effect, I suppose, but the main point is he would be taking a higher level, say in English or mathematics or social studies and he still would be taking English, social studies and math.

Q Within his track?

A Possibly not within his track, but in response to the request or the requirement for these courses in these subject fields be completed, you see, we are requiring everybody to take four years of English, for example, no matter what level of work he is doing, but he might take one in English and he might take the level of general track and he would get this credit for his requirements in the basic track on his other subjects, or vice versa, mathematics or social studies or any other field.

MR. REDMON: Your Honor, Mr. Hansen has been on the stand for more than an hour at this time and I wondered if we could take a five minute recess.

THE COURT: Yes, we will take a five minute recess.

(A short recess was taken.)

BY MR. KUNSTLER:

Q Dr. Hansen, at the break, or just before the break, we were discussing the question of whether you could have

cross-tracking in senior high school and it was your testimony, as I understood it, that cross-tracking was possible because you didn't use the block system in senior high school and I would like to ask you this and I want to read from our Exhibit G-1 on page number 43 which has a quotation from John D. Hickens, Assistant Superintendent of Schools, and I will read this to you and ask you whether it is true and of course I am referring only to senior high schools.

"Students in one track may take courses in another track if they are qualified and with the approval of the principal. However, in order to graduate from a track, a student must have taken all the courses specified as required for graduation in the particular track. For example, a student may have taken half his required course in the regular track and half in the general track. He will graduate from the general track. This graduation from a particular track is not a matter of having taken a majority of courses in that track. Instead it is a matter of fulfilling the exact requirements for graduation from the particular track." Is that a true statement?

A Yes.

Q So when cross-tracking occurs that doesn't mean, does it, that the student may then not finish all of the required courses for the track from which he is to graduate. Let me put

it another way, going a little further to make a little more coherent statement, doesn't cross-tracking really mean that if a student in a particular track wants to have the opportunity to take an elective course in another track, he gets permission of his principal to do so, or his counsellor, whoever has the authority to grant this permission, but he still must complete all of the required classes for graduation from his track?

A That is correct.

Q So we are in essence dealing with an elective situation, are we not, when we are talking about cross-tracking?

A Cross-tracking may take place also in the basic requirements, as I have already explained -- a student in the general track, for example, may elect mathematics from regular college preparatory track and if he does this he satisfies his requirements for mathematics in the general track.

Q This I understand -- that I would understand, but it is true that in order to graduate from any particular track you must at the very least have taken all the required courses for the track?

A That's right.

Q Now, in the senior high school, Dr. Hansen, you have indicated there is some movement between tracks, is that correct?

A That's correct.

Q And I show you Plaintiff's Exhibit B-1 which is 18 for Corporation Counsel and I ask you if this is the document which adequately reflects that movement from June 1963 to the following June of 1964 eliminating the red pencil markings which are not part of the paper?

A Well, it apparently is an accurate reproduction of the materials developed in the junior high school-senior high school offices.

Q And I am looking at the first page, and I ask you whether this group of schools mentioned here are all senior high schools?

A They are.

Q Would you look at the next page and indicate if the same is true?

A That is correct.

Q What about the third page?

A That lists the junior high schools' movement in tracks.

Q And for what period, is that for the same period of time?

A Yes.

Q And is there any other aspect of that document not related to senior or junior high schools?

A Not that I see.

MR. KUNSTLER: I would like to offer this in evidence as Exhibit B-1. I don't have a clean copy, Your Honor. I don't think there would be any objection to our putting in a clean copy.

THE COURT: Plaintiff's Exhibit B-1 will be admitted in evidence.

(Plaintiff's Exhibit B-1 was received into evidence.)

BY MR. KUNSTLER:

Q Now, Dr. Hansen, getting into the senior high school movement, you indicated that the tests were given, the only group tests were given in the eleventh grade, I believe you said in April or May, both for basics and non-basics?

A That's right.

Q And is that the only group test given during the high school period?

A This is the only required test for the -- of a special standardized kind. There are other tests given, you understand, I am sure, by teachers, by departments.

Q And prior to the eleventh grade, prior to the scoring on these tests, which takes place as I understand it in the spring of the year, the last portion of eleventh grade, there

is some fluctuation as Exhibit B-1 indicates between tracks, is there not, prior to April and May in the eleventh grade?

A That's correct.

Q And what is the standard for such fluctuation?

A As I have said, a number of times, teacher judgment --

Q Well, I didn't mean you to repeat it all. Is it the same standard you have mentioned before?

A General counselling procedures --

Q And after the results on the eleventh grade tests are in, then, that is taken, as I understand it, into consideration when you have fluctuation in the twelfth grade, is that correct?

A Tests are taken into account, yes.

Q Now, Dr. Hansen, we have discussed briefly, in going through the various tracks, the question through elementary and junior high schools and senior high school, of racial composition of those tracks and you will recall perhaps that we introduced an exhibit, B-4 which according to my notes was the number of pupils by curriculum in the elementary schools on October the 21st of 1965 and I will show this to you and ask you to keep it in front of you --. Now, just very briefly what does this show and I am talking about the figures just generally.

A This shows the composition of the special academic classes by schools, by race.

Q Now, does it also show the particular schools involved?

A It does.

Q Now, Dr. Hansen, are you familiar enough with the school system, with the racial composition of the schools to indicate from looking at that chart which is limited as I understand it to elementary schools, is that correct?

A That's correct.

Q Which one of those schools that are listed are what we call predominantly white in the way we have used that definition?

A I think I'd rather not rely on memory. I might be giving a very inaccurate evaluation.

MR. REDMON: If the Court please, we did supply a document with the percentage by race which I am sure Mr. Kunstler has if he wants to give it to Dr. Hansen so that he could refer to it.

THE COURT: What is that document?

MR. KUNSTLER: I am not sure what document it is myself, Your Honor. Do you know the number of that document?

MR. REDMON: The document is No. 1, I think.

BY MR. KUNSTLER:

Q Does that No. 1 appear on the document you have in

front of you, Dr. Hansen, anywhere?

A No, I don't see that number on it.

Q No, this is No. 8, it might be P-4, if I might have that -- I think it is our Exhibit P-4 and Corporation Counsel's No. 1.

Now, Dr. Hansen, is it possible to read into the record the elementary schools that are predominantly white from the information that you now have in front of you?

A By predominantly white you mean more than 50 per cent white population?

Q Well, that was not the definition that we were using here before. Predominantly white was, I think according to your standard, a school that would have -- well, I will put it this way: Are there any schools there which have no Negroes in the elementary school? Let me rephrase the question.

Doctor, would you call a predominantly white school, using as a definition, perhaps, that they have at least 85 per cent white population?

A No, I think I can do this rather quickly --

MR. REDMON: I object to his definition of how many whites there are, Your Honor.

THE COURT: Well, I don't think there is anything before the Court. I think the doctor says that he will do it

his way, so let's see what he does.

THE WITNESS: I find no elementary schools listed in this very rapid scanning that have no negro enrollments in the membership.

BY MR. KUNSTLER:

Q All right, Doctor. Now, I am going to read off a list of schools to you and ask you whether these are what we would call predominantly white schools, but before we do this, what would be your definition of predominantly white?

THE COURT: Does this exhibit indicate the number of negroes and whites?

MR. KUNSTLER: Yes, it does.

THE COURT: Well, why are we going through this exercise?

MR. KUNSTLER: Well, I wanted to ask one other question on this.

BY MR. KUNSTLER:

Q Doctor, do you know what the percentage of the elementary schools which are predominantly white would be, for the honors tracks, could you tell me that?

A Well, until I have a definition of predominantly white, I cannot make an intelligent response to that question.

Q Well, if I asked you this question: Is it not true,

Dr. Hansen, that some, at least 83 per cent of what we call predominantly white schools, have honors tracks. Would that sound unreasonable to you?

A You are still leading me in a --

MR. REDMON: Objection. There has been no foundation for that question.

THE COURT: I think the doctor is answering the question.

THE WITNESS: Until we get agreement as to what we mean as predominantly white, I have no way of answering the question.

BY MR. KUNSTLER:

Q Well, is not a standard definition of predominantly white any school having more than 50 per cent of the school population being white?

A I don't think, I doubt that there is any technical standard, but in my view when we are talking about a predominantly white or negro school, it is a 50 per cent cutoff.

Q I didn't hear what you said, Doctor.

A At the 50 per cent cutoff -- a school that has 51 per cent white would be predominantly white.

Q All right.

A And vice versa.

Q Let me ask you this -- that is your definition of a predominantly white school, one that has over 50 per cent white population?

A That is my definition.

Q All right, and would your definition of an integrated school or a racially mixed school, or I think you used the term bi-racial school, be one that had at least one person of a different color in the school up to a point where it reached 51 per cent and then it would become predominantly of that color. Is that correct?

A Your question leaves me confused.

THE COURT: Yes. I would sustain objection to that.

MR. KUNSTLER: I will withdraw it before Your Honor can sustain the objection, because I think it is confusing.

BY MR. KUNSTLER:

Q Let me put it this way: A bi-racial school is one --

THE COURT: Well, he said yesterday a bi-racial school is a school that has one negro in it or one white or more.

BY MR. KUNSTLER:

Q All right. Now, in the schools in front of you is it not true that you have a certain number of what we call white schools which are predominantly white, according to your definition being 51 per cent of white population, in the

elementary schools?

A Yes, if you accept that definition, then we could identify -- I don't think it would take too long to do it, but it would take some time, but if we had the time we could compute the schools which are predominantly white.

Q I will withdraw this line of questioning, Your Honor. All right, now, Dr. Hansen, getting away from this subject for the moment and asking you just a few more questions on the color situation, and then we will get to something else.

Is it not true, Dr. Hansen, that in the junior high school level with the definitions you have given in mind, that the number of basics in the general high school grades of seventh, eighth and nine are composed predominantly of negro children, is that not true?

A Yes, with the full knowledge that 90 per cent of our population is negro, without counting it, we would presume it to be a reasonable judgment to make.

Q Are you prepared to say whether the percentage of basics in the junior high school is more as of the end of 1965 to 1966 school year, is more than the percentage of 90 to 10, 90 negro to 10 white in the school system?

A I would have to check that.

Q Are you prepared to say the same thing with reference

to the senior high schools?

A Here again I would have to check.

Q Would you furnish this information if you have it?

A Very good.

Q All right. Now, Dr. Hansen --

A I wonder if I could get a clear definition of what you want me to do.

Q I will put it another way: The school population, as I understand it, according to your figures is 90 per cent negro and 10 per cent white?

A Right.

Q It is the number of basics in junior high school and in senior high school, does that reflect the same percentage or are the percentages different?

A I understand you.

Q Now, Dr. Hansen, we have run through the entire track system from kindergarten to senior high school and we have reached the college level where we stop. Now, as I understand it from your earlier testimony yesterday, this system is the same track up to senior high school, to fourth track at senior high school level, forgetting the variations which may have occurred since it originated, that was first started in the high schools in 1956, is that correct?

A That is correct.

Q And it was designed by you, is that correct?

A Yes.

Q Yes --

THE COURT: We went through all this yesterday.

MR. KUNSTLER: I am not going to go through it all again, Your Honor, but I wanted to ask something on another aspect of it.

THE COURT: Oh, yes. Go ahead.

~~BY MR. KUNSTLER:~~

Q Now, at the time this system went into effect in 1966 in the high school, as I understand it, the high schools had then been integrated, is that correct?

A That's right.

Q And I would ask you if you are the author of a book called, "^{THE FOUR}~~Before~~ Track Curriculum for Today's High School?"

A I am.

Q And I am holding that book in my hand and I ask you if that is the book?

A That is the book.

Q And this was written in 1964, is that correct?

A I believe the publication might be '64.

Q It was published in 1964?

A That's right.

Q In yesterday's questioning a question was asked as to whether the integration of the school system was one of the factors in considering the institution of the track plan, is that correct?

A That is correct.

Q And you said in your book that at the time of the Bolling-Sharpe decision that there were 64-odd thousand negro children in explicitly separate schools and that there were 41,000 non-negro pupils, is that correct?

A Yes.

Q Prior to the Bolling vs. Sharpe decision was testing conducted on a City-wide testing basis of the students in the negro schools and the students in the white schools?

A It was not -- the testing was limited City-wide to the white schools. There were random checkings in the negro schools.

Q Now, what was the result, if you know, of the random checking of negro schools?

A I am not prepared to give you that information. I am not quite sure what it showed.

Q But you had full testing in the white schools, is that correct?

A That is correct.

A Oh, apparently in the offices of Franklin, I would presume, possibly, but my part of the deposition on the kindergarten situation was done at Franklin school and possibly other parts were done elsewhere.

Q Do you recall whether there were any lawyers for the plaintiffs present at the time of the depositions, or were these interviews by the corporation's counsel?

A They were depositions in the plaintiffs place, I believe, and I want you to know this has been a long time ago, and my recollection is, even on this question, fuzzy, but my impression is that the depositions were in behalf of the plaintiffs.

Q I see.

A I am sure this case was in relation to the kindergarten situation, because the point was how about facilities for negroes and whites in kindergarten after the Bolling-Sharpe decision.

Q To get along, then, Dr. Hansen, there came a time when you conducted special tests, is that correct?

A That's right.

Q Of all student?

A Yes, that's right.

Q And did you group all the tests that were conducted -- do you remember what they were?

A Well, they were tests on achievement. I don't remember the names of the tests, but they were reading and mathematics achievements tested.

Q Were they group tests?

A They were group tests.

Q And they were tests which the school administration decided to give some time in 1956, is that correct?

A The tests were given, I believe, for the first time in 1955.

Q 1955 and it was after those tests, was it not, that the first track system went into effect, is that correct?

A It was in that sequence, yes.

Q In the high school in 1956?

A Yes.

Q At the time of the desegregation of the schools, after the Bolling-Sharpe decision, do you remember exactly when the first desegregation took place?

A I have a very vivid recollection as to that.

Q When was it?

A September 1954.

Q And that was not a complete City-wide integration, was it? In other words, all schools were not desegregated at that time, were they?

A The pupils at that time, according to the policy of the Board, approved May 25, were permitted to attend any neighborhood schools according to the new boundaries which were worked out during the spring and the summer, and at the opening of school in September, 73 per cent of the pupils were attending bi-racial schools.

Q And this would be bi-racial by the standards that you have given?

A Schools in which there were pupils of different races, of negro and white race.

Q Now, do you remember when the 27 per cent, and we are now talking about the time when you only had 116 schools, is that correct?

A Sir, I don't recall the number of schools.

Q It was less than you have today?

A Oh, yes.

Q Do you recall when the remaining 27 per cent of the schools were racially mixed?

A Well, we come up to the current year and we find at least all of the elementary schools, according to this document No. 1, are racially mixed.

Q So you don't know exactly when the 27 per cent, or in what particular year you had that racial mixing of the 27 per cent in these schools?

A I can't give you the date when the 100 per cent mark was reached from this.

Q Is it not true, Dr. Hansen, that starting and shortly after the Bolling-Sharpe decision that the school system began to receive large numbers of complaints from white parents of the City of Washington as to the racial mixing of the schools?

A Would you define what you mean by large?

Q I will rephrase the question. Is it not true that shortly after May 17, 1954, to your knowledge, complaints began coming in to the Office of the Board of Education and the Office of the District School System with reference to the results, the fears, the dislike of mixing of schools?

A Yes, there obviously were complaints from parents.

Q Do you remember the volume of those complaints, and I am not asking for the figures, but I am asking for your best recollection as to the volume?

A My judgment would be that ^{the} number of complaints ~~was~~ were amazingly small.

Q Amazingly small?

A That's right.

Q Now, when were you asked to consider the formulation of the track system, if any, aspect of the Washington schools?

A I wasn't asked by anyone to do it.

Q Well, when did you start working on the track system?

A We, and when I say we, I mean the principals and others working on it, during the course of the year 1955, I would have to check the records, but I think I have something in my book on that, as to when we began talking about a multiple curriculum, that was during the year 1955 and we spent the year in hammering out policies and aspects of the program, what it would contain, et cetera.

Q Was it ready for use by the tenth grade in 1956?
Did this originate with your office at that time?

A The particular grouping we called the four track level and curriculum sequence did originate with my office.

Q And at that time you were the Assistant Superintendent? Of High Schools, is that correct?

A That's correct.

Q And when did you request the Superintendent's approval of the senior high school tenth grade track system?

A Without checking my record, I am assuming now that we had approval by the Board in the spring of 1956 and that at that time obviously the Superintendent was in agreement with it or he wouldn't have presented it to the Board. The Superintendent was informed as we worked back and forth that the program was developing and it is therefore difficult to pinpoint a time, except that the time that the report was presented by the Superintendent to the Board as his involvement or concurrence in the project.

Q Did the beginning of the work on the tenth grade track system occur before the testing, the City-wide testing, or after the City-wide testing?

A It was somewhat concurrent.

Q When you started your work, did you have before you the results of the City-wide testing?

A Yes, I did -- I did, of course, I did.

Q And is it your testimony that you began your work because the test results in front of you showed certain indications, or was it independently of the test results in front of you?

A The test results were a factor. ✓

Q They were a factor. Now, prior to the institution of the track system at the tenth grade level, had there been a track system in Washington, D. C. schools?

A Now everything depends on terminology. There has been ability grouping, as I said, probably throughout the history of the secondary schools. There really existed two levels of programs in the secondary schools, one for the brighter average college bound student in which he would take what was called intensive English, algebra and what we really now call pretty much the college preparatory course and then there was a program for the slow learners and here I am not talking about the severely retarded, but the slow learners,

the so-called non-academic, intensive -- the word intensive was used -- in English, general math, et cetera.

So in essencer there were two levels of curriculum organization at the time we extended the program by way of the honors curriculum and downward to the basic curriculum.

Q But the track system, as we have discussed it here, and as outlined in your book, was first tried in the Washington area?

A What we call the four track system, that special designation, was started --

Q With the tenth grade?

A With the tenth grade.

Q With the facts you have indicated, were the results of this City-wide test that were conducted, is it not a fact that these tests indicated a great disparity between negro achievement and white achievement in the division one and division two complex that existed before Bolling versus Sharpe?

A In the main, yes, but as I said yesterday, my recollection is that low scores were made by white children and high scores were made by negro children.

Q But in the main the overwhelming percentages were

that the negro children tested substantially lower in general than the equivalent white children tested, is that not correct?

A This would be my impression as an average or median, yes.

Q Was it then not also foreseeable that in the tenth grade track system, the four track system as it was developed in 1956, that the net result of applying it to the tenth grade students throughout the school system would be in essence to put the negro students on the lower rung and the white students in general on the higher rung with reference to those scores?

A I would answer no to that.

Q You would answer no to that?

A Yes.

Q Well, when the four track system began in the tenth grade it was composed of negroes and whites in the tenth grade throughout the City high schools, is that correct?

A That's right.

Q And is it your testimony that at that time the amount of negroes in say the basic track was considerably more than the amount of whites in the basic track?

A The number was considerably more, yes, sir.

Q And when you got to the general track, do you remember what the ratio was?

A I don't have a recollection of the specific figures on that.

Q Is it not also true, Dr. Hansen, that the number of whites in the honors track was considerably more than the number of negroes in the honors track?

A That is correct, but there were also negroes in the honors track.

Q Do you recall what the percentage of honors were in 1956 in the tenth grade as opposed to negroes?

A I can't recall. We were ordered by the Davis Investigating Committee to present a report and up until the report I saw today for the first time the racial breakdown by tracks. We have not made such a racial breakdown because we were following the ruling of the Board to take racial counts only once a year, but I have no other information. I do have a recollection that there was a proportion, a fair proportion of negro students in the honors class and a significant number of white pupils in the basic track and that therefore this curriculum organization was not designed on a

racial basis, but on an academic achievement level basis and designed to meet the needs of the children who, if retarded, needed to be taught at that time on their level of teaching and I might explain or volunteer -- I have been told that I should not volunteer too much, but I will volunteer this -- some negro children were placed in the lower track, when you speak of placing negro children in lower tracks it is not the effect of this, because some negro children were placed in the lower tracks and some were placed in the upper tracks.

Q But I asked you this because I realize it is a long time ago, but is this a fair statement that I am making that the number of negroes in the basic track in the tenth grade in 1956 was substantially larger than the number of whites?

A To my recollection it was.

Q And would it be a fair statement also to make that the number of whites in the honors track was substantially higher than the number of negroes?

A This would be fair to say.

MR. KUNSTLER: Your Honor, I have reached the end of a line of questioning here, and I would, rather than start something for five or six minutes, request that we recess at this time.

AFTER RECESS

(Trial was resumed at 2:10 p.m.)

(Dr. Hansen resumed the witness stand for further Direct Examination by Mr. Kunstler.)

THE COURT: You may proceed.

BY MR. KUNSTLER:

Q Your Honor, at this time if no objection, I would like to offer into evidence the book by Dr. Hansen entitled "Four Track Curriculum for Today's High School," which he has identified.

MR. REDMON: I have no objection.

THE COURT: It may be.

MR. KUNSTLER: I think for the purpose of a number we'd give this B-11, Your Honor.

Now, Dr. Hansen, it is a correct statement is it not, that sometime in September or thereabouts, of 1965, that you discovered substantial errors in the placing of pupils into the basic track, is that correct?

A No, that is not correct.

Q Would you indicate for the Court what happened?

A Will you tell me what specifically you have reference to?

Q Is it not true that you instituted sometime in September 1965 what you called, I believe, a crash program for the testing of children in the basic track?

A We established the rule that nobody should be admitted to the basic track without the approval of the pupil personnel services department. As a result of that order, the principals requested evaluations of pupils to be referred to the curriculum and in some cases those already in the curriculum. I believe that it is this process that you have reference to.

Q Well, this new policy on your part was, I understand, based on severe criticism which you had received that a great many of the students throughout the system who were classified as basics were indeed miscast as basics, isn't that correct?

A There are other persistent examples of children being assigned to the special classes for retarded learners who had problems other than mental retardation. This is a fact.

Q Now, as a basis of this criticism, as I understand you it, then ordered a massive reevaluation, did you not, of students in the basic track throughout the system?

A I ordered, as I have said, no pupil should be placed in the basic track without the recommendation of the Pupil Personnel Services.

Q Is that the end of the answer?

A That is the end.

Q Is it not true, Dr. Hansen, that you thereupon requested that certain numbers of children in the basic track be retested on an individual basis throughout the school system and that in fact school psychologists were told to put aside all other work and concentrate on a testing of certain number of basic children?

A I asked the Pupil Services to make a priority object out of the responsibility and evaluate children for possible placement or those in the track itself beginning in September. I left this to them to decide and to the principals to refer cases to that psychological staff for evaluation.

Q Is it not true that following these orders of yours that some 1273 children were tested by school psychologists?

A They were evaluated.

Q They were evaluated?

A Their credentials, their background, test scores already available --not necessarily given individual tests in this case, but tests and other data were evaluated by psychologists.

Q Isn't it a fact after this reevaluation some 66% of those children who had been assigned to the basic track pursuant to your other criteria were determined not to be properly in the basic track and were removed enmasse from the basic track?

A That is not true.

Q Would you explain what did happen?

A I have the report only on the elementary level and have not yet gotten it from the secondary. Of the some 600 elementary school children evaluated for the purposes of assisting principals in the proper and best advantage curriculum placement, all but 26 of these I am told in the research paper done by the elementary schools, were referred for possible placement in a basic track or in some other special education service. In other words, sir, what was being done here was, an evaluation of pupils who needed special study for possible placement in the main, there are few exceptions as I told you, in the basic track.

Q And the net result was, to be put it down in a figure basis, that some 800, I believe, 823 pupils to be exact, were moved from the basic track to other tracks?

A Sir, you didn't listen to what I was saying. I said only a small percent so far as I have information from the elementary schools, were actually at the time of the evaluation in the basic track. A very large percentage of the children were under study, with the possibility of being assigned to the basic track, social adjustment program. I think in some cases some were assigned to special programs at the Hart and Sharp Health School. I wonder if I make it clear?

Q You make it clear. Some students were not in any track but were being considered. You know what percentage of the 823?

A My information has to do with the elementary segment. I do not have this pupil by pupil analysis from secondary schools. That of the some 650 thereabouts, elementary children involved in the evaluations in this particular period of time, all but 26 were studied for possible placement in the special academic curriculum.

Q Dr. Hansen, is it fair to say that in almost every case where you had a reevaluation of a child under this so-called crash program, that there was --it involved a child who was either in the basic track or was being considered for the basic track?

A That is correct, or for some other placement -- some limited possibilities of some other placement, mainly, you're right.

Q Now, with reference to the children in the basic track and my figures indicate that the total overall children number was 1273 during this crash program to whom these tests were administered, that of the total number of 1273, do you have any knowledge of what percentage of those were already in the basic track when the testing began?

A I have given my information on the elementary level, I do not have similar information for the secondary level.

Q Now, according to the Pucinski Report, on page 36, I want to read you one paragraph and ask you whether your testimony is in comfort to this and whether your testimony is correct or this is correct, or where the variations can be explained. I am ready ^{uh} from page 36:

In the Fall of 1965 much publicity was given to a September crash testing of pupils who had been placed by principals in basic track during the previous year and who, because of lack of testing personnel had not been given individual

psychological tests. According to pupil personnel the numbers were 653 elementary pupils and 620 junior high. Of these, test results show 441 belonged in basic classes.

Is that correct analysis or -- I'll let you say what you want about it?

A On the basis of what I have already said, this will be the third time, this is an incorrect analysis and references made as I heard it made here in your statement, that the total 1200 pupils were then in the basic track. They had not been assigned in total to the basic track.

Q Is it not true, Dr. Hansen, that of all of these children that only some 9 were involved in the institutional class which you have mentioned, 4 I believe, or five who were found to be severely mentally retarded and four severely emotionally disturbed, that all the rest were in the regular category of student?

A I would accept those figures without checking -- I think that is approximately right.

Q Those 9 are the one you are referring to as going somewhere else in your statement a few questions ago?

A I think that is about right.

Q Dr. Hansen, after getting the results of these evaluations with these children, would it be your opinion that the results showed a basic defect in the track system as far as the evaluation of basic children is concerned?

A No, because we, up to this time, had not been as precise and this is done with some deliberation, in differentiating between children who seem to have organic mental retardation and those who seem to have a cultural or educational retardation. We were moving in September to the concept that needs to be a specialization of educational procedures and approaches for the child whose retardation, as I have said, seems to be --because no one can really be sure-- the product of say, brain damage or hereditary elements, not defective by ^{nature} ~~nature~~, and those whose academic retardation, whose inability to function in normal regular classes seem to arise from problems of motivation, problems of cultural handicapping, other psychological difficulties that may be attributed to traumatic experiences of a psychological nature that were passed to the

child, specialization being that the one group will then be given a kind of educational opportunity which relates primarily to the source of the retardation, and the second group will be given a somewhat different kind of educational approach. I must say here to that, no one has found the answers to either one of these two specific problems of education, but what I am saying is this, that we are attempting to develop a more discriminating and sophisticated approach to the educational problems of retarded children.

Q Doctor, at the time when there was a concession by the District that there had been some miscasting of pupils into the basic track, you were quoted in the New York Times, and I am reading from December 9, 1965, as stating that the criticism which you had received was, and I am quoting you now, "part of the growing emphasis all over the country on the neglected children. I am all for that. This proves that the critics have their points."

Is that a correct statement to your reporter,
Ben A. Franklin?

A Yes, I'll accept that.

Q Now at the time these results were announced by you, this was, as I understand it, the first public announcement that you had included in the basic track the emotionally disturbed and mental retardates, is that correct?

A Well, I seem to be resorting to quibbling here, let's make it a simple answer of yes, with variations, with exceptions.

Q Is that still the case today?

A It is possible. It is entirely possible a youngster who is mentally retarded -- we'll say here we believe, from the point of view of natural endowment rather than experience-- may at the same time be emotionally upset, may be difficult, may be a problem child. Disabilities as you well know are often multiple.

Q And it is also possible then you can have in a basic track class what you have indicated as mental retardates, emotionally disturbed and then what we call slow learners or those who are not living up their capacity, could all be together, is that not so, in a basic class?

A We prefer not to have that happen if it can be avoided. We are asking principals not to be extremely

discriminating in appointment of pupils to the basic curriculum. What I have said is, there is a possibility of the child in a basic curriculum may also be a behavior problem, you can't separate the two. We have special classes for emotionally disturbed children. This is a program of its own. Where the line is drawn between the need of the child for this type of social adjustment programming where he is capable of functioning on basic curriculum is a judgment has to be made by principal, counsellor, and psychologist, not by me.

Q So the attempt now is to try to separate out of classes in the basic track still within the basic track, I presume, those who are emotionally disturbed and keep them by themselves away from children not emotionally disturbed. Would the same be true of mental retardates who are considerably below the 75 IQ --that is the dividing line?

A By mental retardates, what do you mean?

Q I am asking you what you mean, how would you interpret the term mental retardate as being in the educational sense?

A The terms now being used most commonly among educators and psychologists run relatively like this. A group of children

are educationable, mentally retarded, the group we are talking about who will be assigned and are being assigned to the special academic curriculum. Then there is a group that is more severely mentally retarded, and this group is now commonly called the trainable mentally retarded. These are the children which up to a few years ago were excused from school attendance for which we now have some 43 small classes. There we go, we get into a dull, normal group --and I am talking, I think, psychological terms here, children who range up to, say just the point of the average group which is a big section, and you can move on up to groups we call gifted, superior students.

Q I was interested only in the ones we're talking about in the basic track. Dr. Hansen, after the discovery of the facts that there were children in the basic track who didn't belong there, what happened to those children after September of 1965?

A Well, the children had already been assigned to the basic track were then --instructions were followed, placed in the general curriculum with planning going on now for the development of what we call development classes where the

the pupil-teacher ratio would be 18 to 1, and where the emphasis will be upon developing enriched backgrounds, cultural opportunity, stimulate and motivate pupils to move themselves into their area, into the area of performance with which their endowments seem to qualify. We are being realistic, sir, and understanding of the simple removal of a retarded child from the basic program will not in itself meet these problems, but need to develop a discriminating program for children such as these as well and this is the direction in which we are moving.

Q But it is true is it not, Dr. Hansen, a lot of the children who were removed from the basic track after having been in this for some period of time, I imagine that would vary from student to student, ran into a great deal of trouble in readjusting themselves to the new track depending upon the length of time that they had been in the old basic track, isn't it correct?

A That is not my information.

Q Did you receive any information as to how --let me withdraw that? Did you make any inquiry as to how they 830-odd children were doing after reassignment to a new track?

A I think I will bypass that question, Your Honor, because the inference is contrary to what I have said several times. There is no indication the 800 or any number except a very small number of children tested in September, or evaluated in September, were ever in the basic track.

THE COURT: Eliminate the number, Doctor, and answer the question without reference to the number. Do you have any information as to what happened to the children that were taken out of the basic track and assigned to another track as the result of your additional testing in September 1965? Do you have any information?

A I have no information as to special problems to offer.

BY MR. KUNSTLER:

Q Now, is it not true, Dr. Hansen, that this reevaluation only concerned some little more than 1200 students in

A This is the basic track, one particular segment of the evaluation, it is a continuing process.

MR. REDMON: May I interpose an objection? Dr. Hansen testified three times now those 1200 were not in the basic track.

MR. KUNSTLER: I'll reframe the question. Whatever

number of the 1200 plus students that were reevaluated that were in the basic track, did you after the results were learned by you from the reevaluation, did you order any reevaluation of students in the basic track who were not included in the group that was reevaluated?

A The order was that all of the children in the basic track as of September would have an evaluation by the end of the semester so that a determination would be made resulting in fulfillment of the condition I specified, that children would be then in the basic track only on the recommendation of the Pupil Personnel Department. Now, the process of evaluations continued, I believe I can say safely at this time, all of the children have been evaluated and that the adjustments, whatever the number involved, have been made by this time.

Q Isn't it true, Dr. Hansen, some of the children reevaluated who weren't in the basic track as of September 1965 were not put into the new track, the general track, for many, many months after the results of the reevaluation were known?

A I have no information of this kind.

Q Do you know now at this time, and I believe you may have testified to this, but to clarify my own thought, every single student tested in 1965 under the crash program has been and who was qualified, these 822 who were found to be general track or better, I presume, had been placed in the general track, do you know that for a fact now?

A I accept it as a fact the principals have followed orders, that the 820 some children who were found not qualified for basic track were not placed in basic track or any among them who were in basic track were removed from basic track.

Q Have you checked on that and know it for a fact?

A I have not taken a special check on that in terms of names of pupils or names of schools.

Q Dr. Hansen, were you surprised by the fact of the results of the testing, this crash program testing, did you expect that result?

A I am not surprised by the result because when moving in the direction, Mr. Counselor, and I have said this so many times, of developing a special program for the

mentally retarded, those who by endowment seem mentally retarded, and those who are culturally handicapped, having this in mind, moving in this direction, it seems to me we could expect a variation of this kind in terms of the evaluations and judgments of principals at the time it was made.

Q Was this the first crash program for individual testing you had put into effect since becoming Superintendent of Schools in 1958?

A You speak of the first crash program as if this had some sort of significance --

THE COURT: I think the Doctor doesn't accept your term of "crash program". Suppose you find something else.

BY MR. KUNSTLER:

Q I had understood, Doctor, you had used the term "crash program", if I am incorrect in that I will rephrase the question. Did you use the term?

A I suspect that may be newspaper terminology.

Q Not yours? Was this the first substantial individual reevaluation done on, I would say, would be a mass basis of individual tests since becoming Superintendent of Schools in 1958?

A This was the result of my determination that children should not be placed in basic track without approval of Pupil Personnel Service Department. This required the concentrated effort upon evaluation in order to execute the said instruction.

Q Is your answer to my question yes or no? Was this the first --

A My answer to your question is no. Testing is a continuous process. Children were tested prior to this time by referral from the principals on a form we call 205, in extensive numbers, but this was the first time we set up as a specific condition that the child must have the recommendation, must be recommended for placement here by Pupil Placement Service Department. Do I make it clear?

Q You make it clear to one point. I would like to clarify one question further and we will get to something else. What I am asking is this: is this the first time that you, as Superintendent have asked the school psychologists, in effect, to drop everything else and evaluate through individual psychological tests, as many as 1200 children at one time?

A No, sir.

Q Can you give another instance where this was done?

A Over the years in consultation with the Pupil Personnel Services, I have urged major attention to the evaluation of children for placement in the basic track. I must say again so these two statements will be contiguous, this is the first time I ordered it be done as a condition precedent to the appointment or placement in basic track.

Q I think that is in answer, Doctor. Now, Doctor, just to ask you to identify a few exhibits, I am showing you now B-2 which I have no Corporation Counsel equivalent, and ask you whether, with the exception of the handwritten material which is not part of the exhibit, to explain what that document is? (Hands witness document) One, whether it is an official document, and two, what it purports to show?

A Did you receive this directly from our statistician?

Q No, I did not. This bears no Corporation Counsel number.

A It is an official document and I am not quibbling with that. What concerns me is I am seeing documents today for the first time. Normally I have an opportunity to review statistical findings. This is a table showing the curriculums offered in the various junior high schools for the years indicated -- '61 to '65-'66.

Q It indicates which schools have honors curricula and which do not, etc.?

A That is right.

Q I would like to offer into evidence --less the handwritten material on it. (Hands document to Mr. Redmon.)

I show you also B-3 --less handwritten material-- and ask you if you can tell me what this chart purports to be, whether, one, it is an official document, and two, what it purports to indicate? (Hands document to witness.)

A This also purports to indicate curriculum offerings in the senior high schools for years '61, '62, '63-'66.

Q Thank you. I wouldlike to offer B-3 --without the handwritten material. (Hands document to Mr. Redmon.)

THE COURT: Let B-2 and B-3 be admitted.

(Plaintiffs' exhibits B-2 and B-3 were received in evidence.)

BY MR. KUNSTLER:

Q Now, Dr. Hansen, just one or two more questions on the track system and we can get on to something else. You have already indicated that the report which you furnished to the House Task Force Subcommittee, called the Pucinski Committee, for convenience, plus your testimony was correct

and I would just like to clear up one confusion in my mind. I am reading from page 19 of the report which is a reprint of your own report called The District of Columbia Public School System, A Capsule Review - October 1965, and read you this paragraph and ask you whether you can explain one portion of it to me. You say: "expansion in services occurred most impressively in the following instances: in the special academic curriculum formerly basic from 75 teachers in 1953 - 1954 to 468 in 1965-66; and you go on in the social adjustment curriculum from 5 to 79 teachers, and speech correction from 15 to 82."

I am asking solely about the special academic curriculum. I was confused by the term basic for 1953 and 1954, 75 teachers in the basic curriculum during those particular years. Was there a basic curriculum in 1953-54?

A The reference there is perhaps a misuse of terms. *Atypical Classes*
At that time these classes were called *a typical class*

Q And these were *Atypical class* in Division 1 or 2?

A Both Divisions.

Q Both Divisions?

A Yes, sir.

Q The testing you have testified to was to Division 1, the White Division. Was there testing going on in Division 2?

A Talking now about the existence of special classes for retarded children. These existed in both Divisions and date back to 1906. I should have spoken there to be exact, of special teachers for ^{Atypical} ~~typical~~ classes. The term basic should not have been applied to this particular category of teachers.

Q So we are talking about something completely different ~~what~~ basic means today in our discussion here?

A We are talking with the same category of need, same problems of instruction; we are talking now when we use the basic term when the curriculum has been remodeled, improved, as I said yesterday, with emphasis upon basic education.

Q In determining who went to those ^{Atypical} ~~typical~~ classes, did you use some form of testing for both Divisions?

A In those days I think the problem being non-controversial was handled by each principal in accordance to his own judgment whether a child needed it or we used test factors such as a record of achievement, reading level of the child indicated by the books. As a matter of fact,

the program then was far less precise than it is now because we have more science about this type of program now, and the program is more in the public eye, which is advantageous to it.

Q You have testified before there was testing for the White Division but no testing for the Negro Division?

A Sir, I didn't say there was no testing for the Negro, I said no city-wide testing.

Q There was individual testing going on?

A I am not fully acquainted with testing program going on then but tests were given and a sampling as I said this morning.

Q Now, Dr. Hansen, to get to another subject, I'd like to turn, if I can, to the per pupil expenditure, and I would like you, one, to define for the record what is meant by that term?

A This is the figure for the city as a whole which is arrived at by totalling the cost for operation and dividing that by the number of pupils served.

Q And in figuring out the per pupil expenditure, what exactly do you take into consideration?

A Take into account salaries of staff, teachers, officers, etc., cost of heat and lights and maintenance, cost of supplies, textbooks, materials --all costs, in fact, except those which are in the capital outlay category.

Q So the only cost that would not be included would be the construction or capital outlay?

A Capital outlay or capital improvement category.

Q Now, Doctor, the per capita cost of what we call the per pupil expenditure varies does it not from school to school?

A It does.

Q Do you have any idea in your own mind what the lowest per capita or per pupil expenditure figure is?

A Well, for the elementary, in the last evaluation I believe '64-'65 --

Q To help you, I'll show you F-1.

A Neighborhood of 250. Are you going to base your discussions on '63-'64?

Q I handed you '63-'64?

A That is correct.

Q If you wish to elaborate later on as to how that has changed in some material way, then of course you may do so. What is the highest reflected -- let me withdraw that.

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A That is correct.

Q If you wish to elaborate later on as to how that has changed in some material way, then of course you may do so. What is the highest reflected -- let me withdraw that.

The document I have shown you is an official document is it not?

A That is correct.

Q And I would ask you what is the highest per capita --per pupil expenditure?

A \$649.31, elementary schools.

Q That would mean, would it not, that \$250 sum indicates that is the amount taking into account all the factors of consideration which you discussed for that particular school, divided by the number of pupils in that school?

A That is correct.

Q That would be the same, of course, for the higher amount?

A Yes, sir.

MR. KUNSTLER: I would like to offer this into evidence --again, less the writing. I have no Corporation Counsel number. (Hands document to Mr. Redmon.)

A We supplied this information for the Pucinski Committee. It would be in the record there too.

Q While the Corporation Counsel is looking at that document, I am going to show you F-2, less the writing, and ask you to indicate one, whether that is an official school document, and two, what it purports to be?

A This shows the distribution of the schools by income levels, indicating as well the per capita cost for these schools.

Q When you say income levels, exactly what do you mean?

A Schools located in census tracts where the median income is in one case under \$3,000. Another range, \$3,000 to \$3,999, and so on up.

Q Would you define for the record what the term median income means?

A I will as well as I can understand it. This is census material which apparently provides information about family incomes in particular census tract ranges perhaps in descending or ascending order and a midpoint found for that particular order or array of incomes.

Q So the term \$3,000 median income would mean, would it not, that half the families indicated would be under \$3,000 and half would be over \$3,000?

A This would be my estimate. But may, perhaps, need to be checked to be completely sure.

Q I realize you are not an economist or census official, I am asking what your interpretation is. Dr. Hansen, do you find, as a matter of fact, from your experience in the city of Washington in the years you have been here, that as you go from low median income to high median income that you tend to go in essence from Negro to White as far as racial composition of the families is concerned as a general rule?

A I would suppose as a general rule, but I think we need to be careful not to draw the conclusion that you seem to be suggesting that all Negroes are low income people and all Whites are not.

Q Dr. Hansen, my questions are not suggesting anything, I am asking them so the record is clear and I am not suggesting anything of the sort.

A I am trying to give you a qualified answer.

Q I am asking, from your own experience in the city of Washington, from your observations of the children in the schools and these charts which reflect the median income,

whether you find as a general rule as you go from low median income to high median income you tend, from a coloration point of view, to go from predominantly Negro groupings of families to predominantly White groupings of families?

A I would say yes with the qualification I have suggested.

Q I understand there may be variations and exceptions. I would like to offer F-2.

I am showing you, Doctor, F-3 and ask you if that is an official document and what it purports to be?

A Per capita for junior and senior high schools. It is an official document, and supplied to the Pucinski Committee.

Q I'll show you F-4 while I offer F-3 into evidence.

A What is it you want from me on that?

Q I would like to ask if it is an official document and what it purports to show?

A This is an official document and shows capital expenditures for elementary schools for 1962-63 and contains a set of conclusions and explanations which gives some valid testimony to the raw figures contained in it.

Q Thank you. Now, I show you F-5 and ask you if that is an official document and what that purports to show, and I offer F-4 into evidence.

A The last two documents have an influence upon per capita costs, yes, ratio by which teachers assigned and ~~allocations~~ allotted per capita.

Q Now, Dr. Hansen, you also have what is called an ADM figure do you not?

THE COURT: We better have a ruling on these "F" documents.

MR. REDMON: If Your Honor please, we are checking them over.

MR. KUNSTLER: They were not documents received by us from Corporation Counsel.

Q You also have, Doctor, in connection with per pupil expenditures what is referred to as an ADM figure?

A Yes, there is ADM and ADA figure.

Q What is ADM figure?

A Per capital cost average daily membership.

Q How do you arrive at that figure?

A Average of daily attendance for the year.

Q What is the ADA figure?

A I am sorry. ADM figure is average daily membership which means average daily enrollment.

Q That is correct. What is ADA?

A ADA is average daily attendance.

Q Now, do those have any effect whatsoever on the per pupil expenditure?

A Yes, the average daily attendance figure tends to be higher than the ADM figure because ADA is a lower, obviously lower figure. We have say 6 or 8% average absence in the course of the year, then clearly the ADA figure produces the higher per capita cost estimate because the figure used to divide the amount spent is lower.

Q I understand. Now, Dr. Hansen, is it not a general rule from your own knowledge of the District of Columbia system that in general, the amount spent, the per pupil expenditure, tends to be more as a general rule in what we call the higher median family areas, schools located in those areas than in what we call the low median family groupings, median income family groupings?

A There may be some accidental tendency that way because of conditions but there is also a very mixed condition there. For example, the Bundy Elementary School is one of the highest per capita expenditures and it is located in downtown Washington. But you might say in general, some of

the smaller elementary schools located out through the northwest run higher per capita cost than the large new schools in the central and eastern central part of the city.

Q When you say northwest you mean predominantly White areas of the city?

A New schools such as Stoddard, Hurst, and Mann.

Q They are in what we call predominantly White area schools?

A I would call them that, using 51%, that is the cut-off.

Q Now, Dr. Hansen, is the ADA figure lower for what we call predominantly Negro schools than predominantly White schools?

A We don't compute the capita costs by schools on ADA figure, we do not refine the result into two categories because this would be useless duplication of effort.

Q That question you cannot answer, you don't have the information?

A We don't have the information.

Q Dr. Hansen, in computing the per pupil expenditure, do you in any way include in the figures used --the monetary

figures used that you have already testified to-- any sums received from any of the Federal programs?

A The figures for the years that you have, if I am informed correctly and everything else is properly fixed in my mind, are for appropriated funds only.

Q Appropriated funds only? And they would not include either Federal funds from special programs such as the ESEA or impacted aid act or private contributions, is that correct?

A Not from either source, you are right, this is correct.

Q Dr. Hansen, have you made any attempt whatsoever to do any equalization of the per pupil expenditures as they may vary from school to school?

A The attempt is constant not only to equalize expenditures but rather to equalize services. We make our distribution on the service base rather than moneybase. We do not allow a school, for example, a fixed amount of money and that school operates on the basis of that fund. We allocate teachers on the basis of 30 to 1, grades 1 to 6. We have librarians in the schools where there are librarian spaces. We assign counsellors in schools which most need

them which would be schools with greatest amount of economic restrictions placed upon them. Our allocation is in terms of services, goods, commodities, not in terms of dollars.

Q Would you say this, Doctor, though that a student in a school where there is say a 600 plus dollar per pupil expenditure per annum as against a pupil in the school where there is say \$250 per pupil expenditure per annum, is receiving more or less favored treatment as far as those figures are concerned?

A Dollar figure isn't a proper base upon which to evaluate this question.

Q Let me put it this way then: do you think the pupil in the \$600 per pupil expenditure school is receiving more of the services and the other inclusions which you have indicated form the basis of reaching that figure, than a student in a school which has say \$250?

A It is not possible to make a categorical answer to that question.

Q He is getting greater dollar value?

A I cannot make a categorical answer to that question.

Q Dr. Hansen, if you had your personal choice for the child of your own, would you rather have that child attending

a school which had \$650 per annum per pupil expenditure or \$250?

A *If my* child had visual handicapping and needed a special class placement available at the Grant school which has over \$600 per capita allocation, where there are only 6 to 8 pupils in that class, where obviously the cost of that class in terms of teacher salaries alone will be approximately four times greater than the average class of 30 to 1. If my child had that handicap I would want him placed in that class. I am using this as an illustration why I say you cannot take a per capita figure per school and make a general evaluation about the effect of education going on in that school.

Q I would agree with you if you were going to take special classes.

A They are incorporated in the figures which I just reviewed.

Q Let me ask you another question then, is it not true that there is greater likelihood in a school which has a high pupil personnel expenditure level --600 plus-- that there is more likely to be in that school less pupils per teacher

than there would be in a school which has a much lower per pupil expenditure per annum, forgetting special schools for the moment, is it not more likely there would be a better pupil ratio in the first than second as a general rule?

A It may happen in cases of a school --we are dealing with grades 1 to 6 alone. Small schools as I said once before may have to have a small pupil-teacher ratio~~x~~ because there is a limit beyond which you can go but nearly all the schools for which there are abnormal per capita costs there are special programs. SMR programs, mentally retarded, the ratio is 1 to 6 to 8 and special factors and services are supplied. So again I would say if I were sending my child to school I would want to know the pupil-teacher ratio~~x~~, librarian situation, whether there is counselor there, lunch services. These are service factors which measure the quality of the education more effectively than dollars and cents factors.

Q Let's talk about libraries for a minute, that is a good place. Would it be your general understanding that the libraries are important aspects of the learning process --the presence of school libraries?

A Of course.

Q And school libraries are considered, are they not, in the computation of the per pupil expenditure?

A They are.

Q They cost money to operate and run and staff with books and people, isn't that correct?

A That is correct.

Q They would be part of what you would figure into the per pupil expenditure?

A That is correct.

Q Now, Dr. Hansen, it is true is it not, that of the 138 elementary schools that a great many do not have libraries, isn't that correct?

A That is unfortunately true, but many of them now have that didn't have them five years ago.

Q Are you able to hazard an estimation as to how many of the elementary schools have libraries today?

A Sir, I'd like to look at the document on that. We have a recent report which shows the distribution of services. I believe as of 64-65 --

MR. REDMON: We gave that document. I would suggest it would save time if Dr. Hanson looked at the document rather than speculate.

THE COURT: I think counsel is giving them to him.

MR. REDMON: No objection to F-1 thru F-7.

THE COURT: Let F-1 thru F-7 be admitted.

(Plaintiffs' Exhibits F-1
thru F-7 were received
in evidence.)

MR. KUNSTLER: Is that No. 30, Mr. Mullaney?

Because I have No. 30 which is called Report on Current
Status of Elementary School Libraries. Is that the one,
Doctor? It is our H-4.

A This ought to be satisfactory for the purposes of
this question.

Q Was that the one, Mr. Mullaney you had in mind,
too?

MR. MULLANEY: Yes.

BY MR. KUNSTLER:

Q Dr. Hansen, that document which I have just given
you is an official document, is it not?

A It is.

Q Does it indicate which of the elementary school
have libraries? Librarians?

A It does.

Q Then there is no need for you to just go over it.
I'll introduce it in evidence.

A Unless you have a specific question.

Q This speaks for itself.

MR. REDMON: May I see that?

(Document is handed to Mr. Redmon.)

MR. KUNSTLER: I'd like to offer H-4 into evidence,
Your Honor.

Q Now, Dr. Hansen, in June of 1966 --June 30 to be exact, a report, which is our H2, signed by Olive C. DeBrulla (phonetic spelling), Supervising Director, Department of Library Service, was issued by the school system, indicating certain facts, would you indicate after looking at it what that document purports to do?

A This report lists the number of volumes by school libraries --elementary school libraries as of June 30, as well as junior and senior.

Q It indicates the number of books in all of the school libraries throughout the system, does it not, that were recently furnished to the libraries?

A I would assume this represents the total number of volumes on hand, including those recently furnished and those that may have been accumulated over a period of years.

Q Was there not some augmentation of libraries throughout the system within the last 3 or 4 months from certain Federal funds?

A We have received allocations for library books from Congress at the elementary level for the first time in the last three years. The per capita allocation is too small -- it would be a dollar or twice as much next year. We were also given a basic fund of \$2500 for the initial library purchases in new schools.

Q And the figures that you have in front of you in our H2, that indicates by school, at this moment, as of June 30 anyway, of 1966, the number of volumes in the school libraries throughout the system?

A Yes, sir, it does purport to do that.

Q It shows a great variation, does it not?

A It does.

Q I would like to offer in evidence H-2 less the scribbling. (Shows documents to Mr. Redmon.)

THE COURT: Let H-4 be admitted into evidence.

(Plaintiffs' Exhibit H-4
was received in evidence.)

Q BY MR. KUNSTLER:
Now Dr. Hansen, you have indicated that you would
want to send your child to where there was a sufficient
library, isn't that correct?

A That would be one of the factors I would concern
myself with.

(At this point a 5-minute recess was
taken and changed reporters.)

THE COURT: I think you have not had admitted H-2.

MR. KUNSTLER: I am not going to offer H-2, Your Honor, but instead H-3 which we have agreed is the same as H-2, but it is a clean copy and far better presentation.

THE COURT: H-3 will be admitted without objection.

(Whereupon, Plaintiff's Exhibit H-3
was received in evidence.)

THE COURT: H-2 is withdrawn.

MR. KUNSTLER: H-2 is withdrawn.

BY MR. KUNSTLER:

Q Now, Dr. Hansen, sometime in May of this year you ordered, did you not, an inspection or survey of the elementary school library facilities?

A Yes.

Q And what was the purpose of that survey, if you recall?

A May I refresh my memory?

Q Yes, I will show you, less the writing, a document H-1 for identification, and ask you if you can refresh your recollection from that?

A The purpose was to discover whether we could make space for library service in schools where library rooms are

not available.

Q And is that document an official document of the school system?

A It is.

Q Less, of course, the red writing on it, is that correct?

A Yes.

Q I show you page number three thereof, without the red writing, and I ask you what those typewritten or mimeographed materials refer to?

A Possible space that might be used for library service facilities.

Q Does it indicate certain schools in connection with it?

A By schools, yes.

Q By schools. And does it also indicate that books for some of those particular schools were to be stored in places other than in available libraries?

A In the case of schools without library rooms the books have to be assigned to the classrooms, classroom libraries.

Q And in some of these are they not assigned to kitchens and hallways?

A It is conceivable. Yes, this is done in places as an alternative to sending the books into the classrooms.

MR. KUNSTLER: I would like to offer H-1 less the red writing and H-4 is the report on the current status of elementary school libraries. I will read these off if it will help you -- H-1 is a report on the survey of elementary schools without libraries and H-3 is the number of D. C. school libraries by school and H-4 is a report on the current status.

BY MR. KUNSTLER:

Q Now, Doctor, I will show you document H-5 with no corporation counsel equivalent number and ask you what that document purports to be?

A This is a report on the library resources in the public schools for the District of Columbia.

Q An official document?

A An official document.

MR. KUNSTLER: Thank you. I would like to offer H-5 into evidence and let me give it to corporation counsel.

MR. REDMON: Thank you.

MR. KUNSTLER: That concludes the documentation of libraries and Your Honor has not yet made a ruling on the admissibility of these.

MR. REDMON: They have all been admitted, I think.

THE COURT: If there is no objection, H-1 and H-5 will be admitted.

MR. REDMON: As far as H-5 is concerned, Your Honor, we are checking that, but H-1 is without objection and H-2 has been admitted.

THE COURT: Well, let us get the documents straight. From my understanding, H-1, 3, 4 and 5 have been offered.

MR. REDMON: Yes, we are checking H-5 and we have no objection to H-1, H-3 and H-4 and we are starting with H-5 now.

THE COURT: All right. Let us proceed. These are all admitted and we will rule on H-5 in a moment.

(Whereupon, Plaintiffs Exhibits H-1, and H-4 were admitted (H-2 having been withdrawn) into evidence.)

BY MR. KUNSTLER:

Q Now, Dr. Hansen, getting into the question of the

budget situation, the Washington, D. C. budget situation, were you in the courtroom this morning?

A I presume.

MR. REDMON: No objection to H-5, Your Honor.

(Whereupon, Plaintiff's Exhibit
No. H-5 was received.)

BY MR. KUNSTLER:

Q When Commissioner Tobriner was testifying?

A Yes, I was.

Q Now, I believe during the Pucinski hearings there was introduced by the public schools into evidence before that committee what is referred to as a model budget, is that correct?

A That's correct.

Q And that was a model budget prepared by you and your staff, is that correct?

A Yes.

Q And the model budget which you prepared, as I understand it, came somewhere in the neighborhood of \$478 million, is that correct?

A That includes operating and capital.

Q And maintenance?

A Yes, total budget.

Q It was a total budget?

A That's right.

Q And as I understand it, from reading your testimony starting at page 536 of the report of the hearings and going on to page 573, it was a budget which you thought would be one that would be necessary to adequately operate the schools of the District of Columbia, is that correct?

A That is correct.

Q Now, this model budget was in existence, was it not, at the time of the submission of the regular budget to the Board of Commissioners?

A It was not.

Q It was not -- when was it prepared?

A The model budget?

Q The model budget.

A It was prepared subject to check and I am sure the report shows the date when I presented it, but I believe it was in January.

Q Well, you testified on January the 13th of 1966.

A Well, the model budget was prepared in the two week period preceding that testimony.

Q All right. Now, at what time did you submit your budget to the District of Columbia Commissioners for 1966-1967?

A This budget in question now before the Congress was submitted to the Commissioners last summer.

Q Last summer. Now, was there a deadline to the submission of the budget?

A Yes, sir.

Q What was that deadline?

A I am not able to give it to you. I don't recall.

Q Is the model budget which appears by the way at page 546 to 559 of the hearings the model budget that was submitted to the Board of Commissioners?

A It was not.

Q How long had you been working on the model budget prior to the submission for example of the 1966 to 1967 budget?

A I have already told you, Mr. Kunstler, -- the model budget was developed roughly within the two weeks before we presented it to Mr. Pucinski in January.

Q Now, you were familiar, were you not, Dr. Hansen, with the fact that the model budget would call for a much greater expenditure of funds for all three areas, capital outlay, operating and maintenance, than the budget which was submitted in the summer of 1965?

A Yes.

Q And you knew, did you not, in the summer of 1965 that the amount which you requested was not an amount reflecting the needs of the District of Columbia education system, is that correct? You knew it was very inadequate.

A That is a matter of relative terminology. The asking for 1965 was a far better budget than the one the year before and that was better than the one before that, but all of them are inadequate and I have argued this and would argue it, but in my judgment a much improved budget over the year before.

Q That is not my question. I know, Dr. Hansen, that budgets have gone up every year from a low of \$37 million in 1953 to the highest budget you have ever requested which is \$121 million less the \$100,000 figure, for 1966, but if the model budget is what is necessary to put the District's

system into what you consider an adequately functioning condition --

MR. REDMON: Your Honor, may we approach the bench?

THE COURT: Yes.

(Whereupon, the witness stepped down and the counsel approached the bench and the following conference took place:)

MR. REDMON: As we have already indicated, Your Honor, what is an adequate budget or total budget is not within the realm of the confines of the Board of Education. The records of these people have been put in and they already indicated that no matter what they put in for it has been cut by the Congress which determines how much money shall be spent. We all agree from the realities of life that if we had \$1 billion we could do a lot with it, but that is not the issue here. The issue is a realistic evaluation of the budget and this model budget was never submitted to the Congress obviously because the Congress is not going to appropriate it.

THE COURT: Well, I think Dr. Hansen could testify to that if it needs explanation. I think it is definitely relevant whether or not the Board is asking for enough money and I think the fact that he submitted one budget to

one committee and another budget to the Commissioners may have some relevance, but in any event I think his answer is his answer, and I think he should state it for the record. I will overrule the objection.

MR. EARNEST: Could we have this, Your Honor -- could we just have the question asked about the model budget as submitted -- could we go ahead and get that. We all know it was prepared and what was included in the budget for Congressional purposes, so why don't we just ask Dr. Hansen that?

THE COURT: All right. I will ask him.

Now, we have this motion set for 9:30 in the morning.

MR. KUNSTLER: This is Prince George's County, Your Honor?

THE COURT: Yes. I will have it set down for 9:30.

(Whereupon, the witness resumed the stand and counsel returned to the counsel table.)

THE COURT: Now, Dr. Hansen, before we go into any further into the budget discussion, would you state under what conditions you submitted the model budget to the Pucinski Committee?

THE WITNESS: This was done at the invitation of

Mr. Pucinski asking us to tell him what we thought we ought to have to establish a fairly maximum kind of education for the children.

BY MR. KUNSTLER:

Q Mr. Pucinski asked for that information when you appeared in October, did he not?

A He told us to give thought to it.

Q I see --

A Now, I am revealing private conversations with Mr. Pucinski and I am not sure that I want to do that.

Q No, I am not asking you to go into private conversations. I am merely asking generally if sometime during your appearance or after your appearance in October Mr. Pucinski, in words or in effect, asked you: "We would like to know what a model budget would be," and I believe he said to meet basic needs, did he not?

A Yes.

Q In fact, when you came into the hearing room on January the 13th, Mr. Pucinski is quoted as saying in the hearing: "In the hearing this morning we have asked Dr. Hansen to come before the Committee and present to the

Committee what in his judgment as an educator are the basic financial needs of the District of Columbia in order to give the children of the City anadequate school system," isn't that what he said?

A Yes.

Q If that is what the record shows?

A Yes, that sounds correct.

Q And in response to that invitation of October you prepared the model budget?

A Yes.

Q Which appears there at pages 546 through 559 of the hearings?

A Yes.

Q And this is the budget that you as an educator would want in order to run this City's school system for the year 1966 to 1967?

A That is correct.

Q And that budget is 300 per cent more, is it not, than your figure of \$120 million which is the figure requested for the coming year, it is 300 per cent plus more than the figure you have asked the Commissioners to approve and be submitted to the Congress, is that correct?

A That is correct.

Q Now, Dr. Hansen, with reference to the use of Federal funds and when we are speaking of money for the District of Columbia School System, will you indicate to the Court what type of Federal funds other than those received pursuant to the budget that the Commissioner Tobriner referred to as Federal money, what other Federal funds are available to the school system which the school system has taken advantage of?

A The estimated amount for the next budget year is \$15 million plus, derived from such sources as Title I to Title V of the SEA Act which is the Elementary and Secondary Education Act and a form which we are now benefiting from, which may be as much as 4.6 million, the National Defense Education Act funds, the Vocational Education Act funds, funds from the Department of Agriculture for partial support of milk costs. I believe these are the major Federal sources which will together produce, we hope, if Congress provides the money, something over \$15 million.

Q Now, this \$15 million is not included in the budget figures which Commissioner Tobriner discussed this morning?

A That's right.

Q I want to refer specifically to the Elementary and Secondary Education Act. Are the funds which you said were in the neighborhood of \$15 million --

A Those are from various sources which I have just now enumerated.

Q How much do you say was coming from the ESEA. What is your estimate?

A I didn't specify. The estimate would be in the neighborhood of 5 million, say 300,000 from Title I --

MR. REDMON: If Your Honor please, we supplied these documents and perhaps --

MR. KUNSTLER: Well, I referred to them, but --

MR. REDMON: If you have the documents it might be more accurate than doing this from memory .

MR. KUNSTLER: Well, I have here No. 26 and I think this is I-2 of the plaintiffs and designation 26 of corporation counsel.

THE WITNESS: Do you wish me to specify the data --

MR. KUNSTLER: Oh, no, I am just asking generally.

THE WITNESS: Specifically, this is the proper report. This is the one I was referring to.

BY MR. KUNSTLER:

Q This is an official report?

A An official report.

Q And does it indicate the amount of Federal funds from ESEA?

A It does.

Q Does it indicate anything else?

A It does. This is from other sources such as I have mentioned, the Vocational Education Act, National Defense --

Q In other words, is it up to the date of the report that is -- is there a date there of March 3, 1966?

A Yes, we are budgeting these expenditures on the basis of this anticipated income. There may be variations.

Q All right.

MR. KUNSTLER: Now, I would like to offer this into evidence -- this is a complete report of all Federal funds other than Federal monies we have been talking about, in the budget?

THE WITNESS: That is correct.

THE COURT: I-2 will be received.

(Whereupon, plaintiff's I-2 was received into evidence.)

Q Now, I-2 reflects the Federal funds you have just testified to and I would like to ask you how you arrived at these figures that are reflected in our I-2?

A The figures are determined by the interpretations of the statutes made by the distributing source -- in the case of vocational education, the NEA in the case of the impacted aid money, the ESEA money, Office of Education, this is also true of basic education money. The Office of Economic Opportunity directly is a source and the determination there was made on the basis of grant application. In the case of Federal Food Services, the Department of Agriculture is the source and the determination is made according to the provisions of the legislation.

Q Doctor, in making application for these Federal funds which we have been discussing, are reports prepared and submitted by the various staff people in your office to the various authorities?

A Yes, there are variations depending on the nature of the act. For example, the impacted aid, the amount is determined by formula which is turned over to the Board of Education and used by us without making contracts or plans.

In the case of the Vocational Education Act money we have to make plans and state them and submit them to the regular channels, so my answer has to be depending upon the source of the funds.

Q And in making the requests and knowing what the limits are and the availability of funds from the Act itself, then you reach a determination as to what portion of the available funds you would make application for and then the agency in question, whether it be Office of Education or whoever is administering such funds under the Act of Congress concerned would then make a determination as to whether to grant, all, any, or some of the requests, is that correct?

A Well, I don't think it is and I have already explained, Mr. Kunstler, that the particular legislation affects the method of granting. In the case of impacted aid funds we get X amount by formula made available to us and in the case of ESEA we get under Title I an amount of some 5 million plus made available to us which we would use and which our using will be post-dated. In one case we don't have to submit specific plans to the Office of Education and we get the amount of our authorization based upon a formula which is established by the legislature.

Q So then by looking up the legislation you figure out what the District is entitled to, the dollar amount?

A We are spared that because the distributing agency, whether it be Department of Agriculture, or otherwise, does the function for the States.

Q And they treat the District of Columbia as though it were a State in this situation, is that correct?

A That is correct.

Q So you are really in a sense informed of what is available?

A That is right.

Q And let me ask you this, do you always when informed of what is available apply for those sums?

A We use those sums, whether it is in the form of application or whether we are sent a check for the amount.

Q But what I am asking you is: Does the District take advantage of every opportunity under any of these Federal aid programs if requested sums are involved?

A It is our intention to do that and if we don't, we are, I think, quite culpable.

Q Well, is it not a fact, Dr. Hansen, that on several

occasions under for example Title II and III of ESEA the District has missed submission deadlines in the past and therefore not been able to avail itself of certain funds that were available?

A The only submission date we missed is on Title III, but that has not ultimately entailed loss of funds, because the funds are there.

Q Well, there was also, and if I am wrong you tell me, there was also a missing of a submission date for Title II some time in February of 1966. Does that ring any bell?

A No, it does not.

Q And you did miss Title III submission?

A We missed one of the submission dates. Our submission was accepted for the subsequent date and it has been under study. We have ^{not} been given the full grant as yet under Title III.

Q Well, that Title III submission date was supposed to be November of 1965, was it not?

A Without checking that, I will accept the date you give. We missed it and there was some such space of time involved.

Q And therefore you could not resubmit, as I also

recall, until some time the following February, is that correct?

A Our submission was retained, I think, for examination in the subsequent review.

Q That's right and it couldn't be acted upon until the next review period came about, is that correct?

A So we were told.

Q And in fact although you say you have not received all the funds, the result of it was in essence a three months' delay, is that correct?

A Yes.

Q Do you remember the dollar amount involved in that submission?

A In the neighborhood of \$400,000.

Q And was it your plan under Title III in that submission to strengthen the programs at Gordon and Western -- was that the purpose of the submission?

A No, this is not the purpose. Title III provides funds for setting up innovative developmental centers, curriculum instruments, developing new methodology for teaching and this is what we hoped to do. This is the

essence of our plan. Title III provides funds for such organization to be used by the entire City school system, both public and private, and it has nothing to do with Gordon and Western specifically.

Q There was no plan to set up some sort of curriculum resource program at Gordon and Western growing out of Title III application?

A Well, what is it you want to know? There is a small study project which has been already approved by the Office of Education in the amount of \$12,000 which involves an effort on the part of these schools, including Wilson, Deal coming on down to Gordon and Western, I think may be involved, and it is a kind of compact arrangement for the study of new technologies in this voluntary organization or association of school officials and initiated by them, approved by us and approved by the Office of Education and in the amount of \$12,000.

If this is what you are asking about, this is the answer.

Q I was talking about Title III submission which was submitted after the prescribed time in November of 1965 and

I think we can go on to something else in a moment, but you indicated that the Title II, that there had been omitting submission under Title II, and just for the record, Title II has to do with the purchase of library books, does it not?

A That's correct.

Q And a request by you, and you tell me if I am wrong, was submitted in December of 1965 in which a request involved some \$345,000, is that correct?

A That is the amount roughly, and if that is the date there, what record you have before you, I will not debate the question.

Q It is my information that because of the late submission of the request under Title II it was not approved until some time in February of 1966 and as I understand it, the contract for the books involved had to be made by March 15 of 1966 and so in essence no books were received during the current year. Is that your memory -- to June 30, 1966?

A I think the books are now on order and are being received.

Q Well, the books weren't received during the school year 1965 to 1966?

A I would have to check the extent to which they have or have not been received.

Q Now, Dr. Hansen, as I understand it, the elementary-secondary education act, Title I, is reserved for children of low median income families, is that not correct?

A That's correct.

Q And in the impacted aid act, as far as the District of Columbia is concerned, it is also limited as to any aid received under the impacted aid funds?

A This is the intention of the legislation as indicated in the report insofar as administratively feasible.

Q But the District of Columbia itself, as I understand it, was instructed by the Committee that impacted aid funds were to be used solely for poor children, is that correct?

A Insofar as administratively feasible.

Q Now, getting away from ESEA you have also, as I am sure the exhibit will indicate, and I believe it is I-1 or I-2, you have also made a similar application as you did under ESEA for Federal funds for the District, is that correct?

A With reference to impacted aid?

Q Impacted aid funds -- that is included in our I-2?

A Yes.

BY MR. KUNSTLER:

Q Now, Dr. Hansen, could you explain just briefly and I don't want you to go into the details, but briefly what is the WISE plan insofar as you are concerned in the schools?

A The objective is to attempt to hold in balance the existing bi-racial composition of the Western High School, Gordon, Jefferson and Francis Junior High School, to do this by making a superior administration, special administration, superior education insofar as we can with the impacted funds, allocating some impacted aid money, approximately \$400,000 for this purpose, justifying that on the grounds that by actual count 31 per cent of the pupils enrolled in these four schools or perhaps it is 34 per cent, come from income areas in the City with median incomes not over \$5,000.

In addition, to step up the services in terms of teachers and supplies, equipment and facilities of these four schools. We also are directing the people responsible to do everything humanly possible by innovating to admit new ideas, to bring them into the school community by means of the best talent available in the neighborhood universities

in science, art, and all aspects of the disciplines, to give these four schools the kind of special dynamism which we should have in all of our schools, obviously, but we are urging things which we hope, and under these conditions may give something of the dramatic flair that we may normally lack.

Q And these three schools that you mentioned, Gordon, Jefferson and Francis are feeder schools, are they not?

A That's right.

Q For Western High School?

A That is correct.

Q And I believe that you testified yesterday that Western High School while not 50-50 is close to it -- there are a few more negroes than whites?

A That's right.

Q And for the purpose of doing this you have received some impacted aid funds, is that correct?

A We have received authority from the Board to use impacted aid money. The authority has to be cleared by the District Commissioners.

Q Do you know the amount of money involved?

A In the neighborhood of \$400,000.

Q Do you know how long the impacted aid program has been in existence?

A Yes. We are going into the third year of operation. This impacted aid has been in existence for other parts of the country since 1960.

Q That is correct. Now, with reference to the District of Columbia, when were the changes proposed under the WISE program as far as time is concerned?

A You mean by me to the Board of Education?

Q That's right.

A I would say March.

Q Of what year?

A Of this year.

Q Is this the first time that such a program has been proposed by you?

A For this purpose, yes.

Q For this purpose?

A You understand we have many other special programs.

Q I understand, but I am now talking about for this purpose, as I understand it, without having the report before me, the purpose of maintaining a bi-racial high school being fed by bi-racial junior highs -- that is the fundamental

purpose, is it not?

A That is the purpose and -- well, I think I have answered.

Q Is the purpose for doing so to provide quality education, equal educational opportunities to the students attending those schools?

A No, sir. The reason~~is~~ to determine whether by supplying additional quality of education we will hold the white parents in the area and perhaps attract others back into the community, as a deliberate effort to determine experimentally whether it is possible to achieve a better racial balance by this means.

Q And as you have testified yesterday this would be preferable education, is that correct?

A This is my position.

Q Doctor, is this the first systematized attempt that you have made while Superintendent of Schools to attempt to hold white parents in certain areas or certain sections of the school system?

A As a specific plan with this purpose in mind, yes, but one of the primary purposes in my effort is to improve the services of the school system and the quality of

education through, there I say the track system, although there are other systems and other types of processes in education, of course, has been to develop the kind of education which would be acceptable and useful to every citizen in the community and which would attract people into the community for the purposes of receiving that education.

Q Now, Dr. Hansen, taking these three areas or Western High School which encompasses these three junior high schools, would you care to estimate what the average or the median family income is for Western High School area?

A I don't think I have to estimate it. We have that data documented by statistical research in my office and this information can be supplied for the record if you want.

Q All right. We will leave that for the record, then. Dr. Hansen, is it not true that the use of the funds you have requested, and you said some \$400,000, will have the effect of draining off impacted aid funds for the poorer areas of the City where the median income of a family is \$3,000 to \$3,999?

A The answer is no for the reason as I have shown you, that our study of the home addresses of the children attending

these schools indicates that one-third of them live in census areas where the median income is under \$5,000. Therefore, these four schools are entitled to a proportion of the impacted aid money.

Q That would be one-third of 5,000 or under and two-thirds of 5,000, is that correct?

A That's correct.

Now, Dr. Hansen, I want to call your attention to another attempt of the school system with respect to experimentation and I would like you to refer to the question of the Model School Division, the Cardoga Division, and ask you to explain to the Court what the Model School Division essentially is and what the purpose is?

A This is a section of the schools clustered around Cardoga²⁰ High School, elementary, junior and senior high schools, formed together as an administrative unit under the direction of the Assistant Superintendent (with staff,) to develop, stimulate and try out new approaches to the education of children particularly urban children with economic and cultural restrictions in their backgrounds.

Q As I understand it, Dr. Hansen, and correct me if

I am wrong, the plans for the formation of the Model School Division began back in 1956, is that correct?

A That is incorrect.

Q All right. Does 1956 have any relevancy?

A There is no relevancy whatsoever to the Model School Division. This is a fairly recent development and, here again, subject to memory which is questionable on this question, but I believe it is in its third year of operation or entering its fourth year of operation.

Q Dr. Hansen, are you familiar at all with what was referred to as the Great Cities Project in 1956. Does that mean anything to you?

A Well, there was several Great Cities Projects and I have been one of the active members of the Great City Council since it was organized. I am not sure what you are referring to.

Q Well, I will try to be more specific. Is it not true that sometime in 1956, under the Great Cities Project, a plan for a study began in the city of the educational needs of the children in urban areas?

A Well, --

Q Impoverished urban areas of the City.

A I am afraid --

Q Let me put it another way. If you don't remember anything about it at all --

A I don't see the connection between anything I have in mind and this designation.

Q All right. You say as far as you are concerned there is no relationship between that 1956 project and what culminated in the Model School Division?

MR. REDMON: I object, Your Honor. I think Dr. Hansen testified that he does not recall such a project.

MR. KUNSTLER: All right. I will accept that, if he doesn't remember, if he doesn't remember it.

BY MR. KUNSTLER:

Q Then your answer is that you don't recall such a project?

A Yes. I am sorry to say it has to be my answer at this time.

Q Well, there came a time, did there not, Dr. Hansen, when a series of proposals with reference to the Model School Division to which you have testified were presented

to the Board of Education?

A That's right.

Q And it would be approximately in 1964 that special presentation was made?

A The preliminary and first stage, of course, was the report to the Board, request for authorization to set up the Model School Division. I regret to say I cannot fix the exact month in my mind, or even the year for that, following which during the summer a study by the staff was made and presentations of programs were made to the board.

Do you have any document?

Q No, I don't have any document. I just want to get the point across that there came a time, did there not, when the Board of Education approved the model school division?

A Oh, yes. The Board of Education approved it as outlined and then we presented the project to the Board for its approval.

MR. REDMON: Your Honor, in the interests of saving time, would it not be more expeditious to show him the document if he has any?

MR. KUNSTLER: Well, I don't know that I have the proposals that the Board approved.

BY MR. KUNSTLER:

Q Doctor, I will show you Exhibit No. S-1 and S-2 for the plaintiff and ask you to identify them, starting with S-1.

A Well, S-1 is the Cardozo Project of urban teaching and this is a project which had an independent element of its own although it was organized by the Model School Division as an effort to determine whether it was possible to develop internship preparation for teachers in the teaching in urban schools. This was a teacher training program involving at the outset Cardozo, in the very first instance, the Peace Corps returnees and later broadened to include others interested in achieving a competence in teaching and in earning a Master of Arts degree in teaching in cooperation with Howard University. Now, this project is one of the projects in the Model School Division, but it is not the Model School Division.

Q But it grew out of the Model School Division after its establishment, is that correct?

A That's correct.

MR. KUNSTLER: I would offer S-1 into evidence.

BY MR. KUNSTLER:

Q What is S-2?

A S-2 is a presentation made by us through the Board of Education to the Office of Education Civil Rights Section asking for funds to establish a unit in our school system responsible for improving the desegregation processes in the schools and supplying a concerted direct attention to all aspects of human relations with the hope that the people in charge of the program might well give attention to improving the quality of the education in terms of broadening social and cultural experiences of the children throughout the school system.

The proposal was submitted to the Board of Education and the Office of Education, was approved by the Office of Education in the amount of something like \$85,000 which is about 40 per cent of our request and we are in the process of implementing the project.

Q Thank you.

A You understand this has no relationship to the model school program as a unit.

Q I understand.

MR. KUNSTLER: I will offer S-2 if there is no objection.

BY MR. KUNSTLER:

Q Now, Dr. Hansen, the two documents I have shown you

MR. KUNSTLER: I have no further documentation, Your Honor.

THE WITNESS: If this is an important matter, Your Honor, I would be happy to supply the record rather than trying to do it from my memory.

THE COURT: Well, as I understand it, it was approved in June of 1964 and your best recollection is that it got started sometime in the next school year. Is that correct?

THE WITNESS: Yes, that's right.

BY MR. KUNSTLER:

Q In connection with the Model School Division, as I understand it, an advisory committee was formed, was it not?

A That's correct.

Q And is that the advisory committee that Judge B was the chairman of?

A That's right.

Q To go back to where I was a moment ago, as I understand it, the Model School Division functionally was to get some of the same things done that were done differently in the rest of the school system -- that is these 19 schools in the Cardozo Division were to be treated differently and I

wonder if you could indicate some of the things associated with this plan to be done, functional things in connection with the Model School Division which were done differently than was being done with the rest of the school system?

A This is a question you are asking?

Q That is a question.

A In terms of structure of organization and grouping together the schools ran from kindergarten through vocational and senior high school so that we had a vertical articulation of management control and supervision which is different from any other part of our school unit, under the direction of Assistant Superintendent, Mr. Nickens.

The second element is this was in schools where deliberate attention is given to testing out new ideas, developing, initiating educational techniques and mechanisms without any of the normal restrictions saying simply that if any idea seems to be worth exposure it should here be explored as an experimental design and if proved useful, then be expanded throughout the school system.

The third objective which we are far from realizing within this area, and we would hope by bringing in funds from various sources without robbing other schools we can

develop it, is administration of the best kind of educational services available in terms of supplies and equipment, teaching ratios, quality of teachers, health services.

For example, we are developing a program and hope to get some results from it, of supplying maximum health services to all the children in this area.

So that gives an illustration of the third dimension that we had with the Model School Division.

Then, in addition to being articulated vertically and designed for administration and innovation would also be a division in which we would attempt to supply the kind of model school we are talking about in the budget in our report to Mr. Pacinski.

Q Well, let me just ask you this because I understood you, from what you have just said, to say that the main purpose was to have experimental cluster of a complete school system, a miniature school system within a larger system wherein programs that might be useful throughout the entire system could be developed and then spread throughout the entire system if they were found to be beneficial, is that correct?

A This is one of the purposes.

Q Has that been done and if so, would you like to delineate what programs developed in the Model School Division have been implemented throughout the school system?

A In many programs and if you want detail on this I hope you are going to get the experts in on it, but the urban teaching program is a case in point which has reached a state where I perhaps can state I propose to the Board of Education the teacher internship program, somewhat different from the training program of Cardozo, but having the elements of guided and selected introduction into the teaching profession under the expert eye of the master teachers of selected personnel and I think it is fair to say that the success of the urban teaching program in Cardozo has prompted me to make a proposal for internship programs applicable to the entire system.

Q Well, has that proposal been made by you to the Board of Education?

A It is before the Board of Education currently.

Q And was that the only proposal that you have made growing out of the Cardozo experiments to the Board of Education for implementation throughout the school system?

A (Pause) I can think of no other specific proposals of this kind which could be related to the administrative work going on in Cardozo, in the Model School Division project. With some opportunity to review, I might find others which would make some connection, but I think this was the big one and may I say is of no small magnitude when you consider the implications of it on the system.

Q Is this internship, and I would refer to it as in-service teacher training -- is that a name that you would give to this, would that be an accurate description?

A Yes, but it is oversimplified. Do you want me to detail what I mean by the proposal which is before the Board of Education. Is that pertinent?

Q Well, I would just like you to, in brief, indicate exactly what the proposal is before the Board of Education, but in brief so that there would be some understanding on the record of what the proposal is.

A The essential element of it is that the teacher who comes in the school system without prior teaching experience will be placed under the care and guidance of the master teacher. She would be given a reduced load, perhaps running

no more than two-thirds or one-half of the normal teaching load.

The master teacher would be given a reduced load and extra compensation for helping the new teacher take over the classes and make the transition in the teacher preparation stage to the performance stage. This would be coordinated under the structure I have outlined and I would expect that there would be maximum service in terms of resources in the school community available to the new teacher.

The objective is to make an emphasis on the teacher preparation rather than as you would expect the teacher coming out of college with only minimum amount of practice in teaching and having to step into a full average load of responsibility and carry the same kind of responsibility as a teacher of experience. Now, the thought occurs to me -- I am sorry but it slipped my mind that we have another case in point.

THE COURT: What is the purpose of going into all of this?

MR. KUNSTLER: I don't need to go into it anymore, Your Honor, and I didn't even need to go into it this far.

BY MR. KUNSTLER:

Q Let me ask you, Dr. Hansen, you have already

indicated this is the only proposal that you can recall growing out of the Model School Division. What is the racial composition of the Cardozo Division. Is it predominantly negro or is it predominantly white?

A Without reference to the table of enrollments I would say it is predominantly negro, that is, a school with a population of over 50 per cent negro.

Q There has been, has there not, substantial criticism of the result of the Model School Division program?

A There has been criticism.

Q And that criticism has been from the Chairman of the Advisory Committee, the Citizens Advisory Committee -- Judge Bazelon.

A That is correct.

Q And a lot of that criticism was interposed into the report, was it not, the Pucinski report -- have you read the Pucinski report on the question of the Model School Division?

A I have not read specifically -- let me read this myself. The report of Chief Judge Bazelon with response to inquiry from Mr. Pucinski, was published, or was made public and a copy sent to me which I got.

Q Is it not true and then we can leave the model school division, is it not true that the net result of the functional operation from March, say, of 1965 to date has been -- outside of the plan you mentioned which you have proposed, -- substantially what the critics have described as a complete failure of the Model School Division to meet the responsibilities that the division undertook when you proposed this plan to the Board of Education and it was accepted in June of 1964?

A Well, I deny that conclusion and I can take the time now to justify my conclusions if you wish me to.

Q No, I just wanted to know, and you have answered, you deny that it is a complete failure.

A I do.

Q To meet these objectives?

A I maintain that many exciting things are happening in the Model School Division and teaching methodology, for example, in-service training for teachers and such projects are going on at this very moment in which teachers have been given revitalizing and exciting kinds of methods and techniques of teaching and science, teacher aid programs which it has in a sense started, and there was an extraordinarily

good development, the training of teachers under the Aegis of the Washington School of Psychiatry in the hope that they could develop a City-wide program of the same kind and this may be an illustration of some things that have evolved under this program. Another case in point is the significant development of visual aids in teaching which was conducted quite a while ago and this is some of the work that is going on in this division so the answer would have to be generalized to that question in that I think we have here people who expect more than we have accomplished and they are impatient rather than really taking the position that nothing has been accomplished.

Q Well, let me ask you just four questions and then we can leave it and these are areas where I am going to ask you whether anything has been accomplished by these four schools in these direct fields. For example, has there been any program developed involving the question of parent training, the parents of the pupils in the Model School Division?

A Yes, that has been one of the strong thrusts, particularly in the Saturday classes which we are now beginning to call family classes.

Q When did they start, Dr. Hansen?

A Well, let's see. It has been in existence for something around two and a half or three years.

Q Well, I am talking now about the Model School Division itself, the Cardozo Division.

A These have had their inception in the Model School Division.

Q Well, haven't they been --

A Let me give you a generalized answer because I don't want to quibble with you, but my answer is yes, parents are being widely involved.

Q Well, surely there are parent training programs going on in other branches than the Model Division?

A By that do you mean adult education programs?

Q Well, I am using parent training as adult education, yes, and the like to train parents of the children in the area which I understand is an area which might be called a poverty area where you have very low median family incomes.

A Well, of course, we have adult education programs on a City-wide basis and some of them are centered in the Cardozo area, but we also have the Head Start programs which involve parents and a strong effort has been made to get parent involvement in our school system throughout the City.

I don't want to answer yes or no to a question which really ought to be elaborated.

Q Well, I am talking about parent training classes other than the ordinary adult education programs that we speak of?

A Not as you use it.

Q All right. What about what I would call cultural enrollment programs which I understood to be one of the objectives of the Model School Division?

A There is great emphasis placed upon that.

Q Could you elaborate, please?

A For example, the Model School Division arranged for the presentation of a musical, musical concerts, they have taken the children to places such as theaters, concerts, bringing poets in for a wide range of experience of this kind specifically to the Model School Division and also carried on in other parts of the school system.

Q Well, there's nothing new about that type of program, is there. That is a normal program that goes on throughout the City, is it not?

A The newness, I think, is perhaps specific direct attention to this type of programs.

Q Well, I will accept that as your answer. Is there any new aspect with reference to the vocational training programs growing out of the Model School Division?

A Yes. We have at Cardozo what we call building maintenance programs for boys who are disinterested in academic programs. There is extensive interest in that type of training program at Cardozo and recently this has been rather detailed. There has been a considerable increase in vocational opportunities at the high school, new equipment and an increase in enrollment and there has been some attention to the preparation of girls for food service programs, services and jobs, vocations.

Q Well, isn't it true that really the only program that came out of the vocational training involved some 20 girls, isn't that correct?

A It is not correct.

Q Lastly, Doctor, could you indicate what new programs have been developed out of the Model School Division with reference to fostering the exchange of ideas between pupils attending the Cardozo Division, other than what you have throughout the City?

A I don't think I understand the question.

I don't want to answer yes or no to a question which really ought to be elaborated.

Q Well, I am talking about parent training classes other than the ordinary adult education programs that we speak of?

A Not as you use it.

Q All right. What about what I would call cultural enrollment programs which I understood to be one of the objectives of the Model School Division?

A There is great emphasis placed upon that.

Q Could you elaborate, please?

A For example, the Model School Division arranged for the presentation of a musical, musical concerts, they have taken the children to places such as theaters, concerts, bringing poets in for a wide range of experience of this kind specifically to the Model School Division and also carried on in other parts of the school system.

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A I don't think I understand the question.

Q Well, as I understood it, one of the main objectives of the Cardoso Model School Division was the promotion of the exchange of ideas in the classrooms of particular children, thinking problems out loud, that type of program, different from those throughout the rest of the system?

A My answer would have to be that this is really the quality of education that should be going on in any classroom.

Q But were there any specific programs for the children in the Cardoso Model Division that you can think of to foster the exchange of ideas, thinking out loud concepts, which, apparently, as I understood it, was one of the prime motivations of the Model School Division, to develop?

A I think there has been clearcut evidence that taking even your primary grades, the teachers are developing techniques which stimulate pupil responses in a more vital and vivid manner than might normally be customary. This is also true in reading and the Model School Division at Cardoso has done some extraordinary dynamic work among the teachers there, young teachers who have extraordinary gifts in getting the children to respond and that is what I think you are talking about, the quality of teaching which of course ought

to be the quality of teaching in every classroom.

Q Just closing out the subject of Model School Division, Dr. Hansen, are you satisfied personally that the Model School Division has achieved what it set out to achieve when you first proposed it to the Board in June of 1964 and when it was approved in June of 1964?

A The obvious answer is no.

Q Would you say that the Model School Division, while you are not prepared to call it a failure as you have indicated, is a long way off, or has a long way to go before achieving any of the objectives that you set out in your proposal to the Board in January 1964?

A I would answer that the division is making significant advances in terms of the objectives which were originally set forth.

Q Would you say it has a long way to go to reach those objectives?

A I would say without equivocation that education in general has that kind of a road ahead.

Q We will leave that, again, Doctor, and get to the next question. One aspect of our complaint has to deal with the question of contributions to the school system from private sources. As I understand it, contributions are made

from the parent teachers associations and the like to certain schools, is that correct?

A That's correct.

Q And are those funds earmarked in some instances for certain uses?

A It depends upon the intention of the contributor.

Q I would agree, but may I have a yes or no answer to my question. Is it correct that some contributors earmark funds for a library or a gymnasium, or what have you?

A My answer is still the same -- depending upon the objective of the contributor.

Q And the intention of the donors range from such things as books to some form of equipment, televisions and the like, is that right?

A Yes.

Q And you report those contributions, do you not?
To the Board of Education annually?

A We do.

Rec'd Q I show you a report of June 21, 1966 and I ask you is this your annual report for 1966?

A This is the report since February the 16th of 1966 -- this is the second half of the bi-annual report.

MR. REDMON: J-1?

THE COURT: No, we are going back to S-1 and S-2.

MR. REDMON: Oh, I am sorry, Your Honor. I don't believe there has been a ruling --

THE DEPUTY CLERK: Your Honor, I think there is no ruling on I-3 at this point.

THE COURT: I-3 may be admitted and I-1 and I-2 have also been admitted.

(Whereupon, plaintiff's Exhibit I-3 was admitted into evidence.)

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BY MR. KUNSTLER:

Q Most of the contributions that you receive of this nature were from an identifiable donor, is that correct?

A That's correct.

Q However, you did receive some funds which are from anonymous donors, is that correct?

A We did.

Q Now, in 1961 you received a donation of \$50,000, is that correct, from an anonymous donor?

A I'd have to check the documents.

Q I show you a document which is our J-5, No. 24 of the corporation counsel.

A This was received in a unit of \$25,000.

Q Do you remember what the purpose of this was?

A Yes, this was to supply food for the children during the summer months. It in a sense antedated the idea of the Head Start programs in the summer.

Q But some children were not included, is that correct -- some children were not to receive the food, is that correct?

A I am not sure I understand what you have reference to.

Q Well, is it not a fact that these donations were made with instructions from the donor on what the donor called obstreperous or loud children who were not to be fed if they did not meet certain standards?

A Sir, I think you are straining on that particular point. I don't know of any single child who was ever denied the service of milk during this particular summer operation.

Q But you did accept the donation with certain conditions on it, is that correct?

A Conditions were that the children would participate in some learning experience, that they would learn the milk program by this participation. That was a condition.

Q Does the report indicate anything about obstreperous children in it?

A It makes the point that the children must be willing to abide by the rules of the decorum during the instructional period. As I say, I know of no single child who was turned away and this was a limited program, you know, but I just can't envision attempting to make any such characterization of it with a donation, of such a consideration and any intention of this kind is quite beyond my comprehension with this kind of a donation to have this type of limit attempted to be placed on it.

Q Well, I am just referring to what it states on there.

A And I am indicating my reaction to your question.

Q All right, sir.

MR. KUNSTLER: I would like to offer this corporation counsel No. 25 less the material handwritten on it and it is our J-5.

MR. REDMON: May I see it, please. No objection to J-1 through J-4, Your Honor.

THE COURT: Exhibits J-1 through J-4 may be admitted.

(Whereupon, Plaintiff's J-1 through
J-4 were received in evidence.)

↓ 1/22
BY MR. KUNSTLER:

Q Now, I am questioning you about J-5, Dr. Hansen.
And it is my understanding that you said that that was not
\$50,000 as indicated, but \$25,000?

A The actual amount that we could use was \$25,000.

Q What happened to the remaining 25?

A It was not received.

Q Was it promised by that donor?

A If needed.

Q If needed -- was any request ever made by you for
the full \$50,000 grant?

A We could not use it. We had to depend upon volunteer
help and teachers in conducting the summer program and it
was not possible to use the full amount, so we didn't ask for
it.

Q I see. I show you now No. 24 from corporation counsel
and I ask you if you can identify this document briefly and
we will put it into the record?

A The first is a poll of the Board of Education asking
for authority authorizing the expenditure of \$75,000 grant
from the Ford Foundation dated January 23, 1961, for the
purpose of developing an incentive language arts program in

certain elementary schools.

Q Was that grant accepted by the Board?

A The grant was accepted by the Board as indicated by the signatures on the poll.

Q And was the \$75,000 used for the purposes indicated by the donor?

A The \$75,000 grant was used for the purposes indicated.

Q If you would just carry on.

A Secondly, there is a report of the Board of Education asking for authority to accept from the National Advisory Mental Health Council -- do you want me to go into the details?

Q No, just generally.

A Fund to be used for a study of inter-personal relationships within the staff which was approved by the Board of Education and accepted and to be implemented over a four year period.

(Whereupon, Plaintiff's Exhibits 6 and 7 referred to were marked for identification.)

Q If you would just indicate the others briefly.

A Next, January 11, 1962 is a report asking for

authority to accept funds for a special instruction program to be conducted in the urban services corps project, this is a building maintenance project for which a grant of \$20,000 was indicated and an amount of \$25,000 was received from an anonymous donor.

Q And that was used for this purpose?

A That was used for the purpose indicated.

Q Thank you.

A Next is a request of the Board to accept \$5,000 -- I beg your pardon -- \$500 from the Hahn Foundation to be used by the urban service group to open school buildings on Saturdays. The date is November 1962.

(Whereupon, Plaintiff's Exhibits
Nos. J7 and J8 were marked for
identification.)

Q Was that accepted and so used?

A Accepted and used for that purpose.

(Whereupon, Plaintiff's Exhibit
J-9 was marked for identification.)

The next is a report dated November 21, 1962 recommending that the Board of Education accept a gift of an anonymous donor to have an -- have a library administration

project at the Amadon-Goding Elementary Schools. The project was in the amount of, or the check was in the amount of \$14,722 which was accepted and used for this purpose.

(Whereupon, Plaintiff's Exhibit

J-10 was marked for identification.)

Next, December the 19th, 1962, the Board of Education was asked to accept a gift of \$1,000 from an anonymous donor for the Urban Service Corps which would be for the purpose of purchasing shoes and clothing and school supplies for indigent children and that was accepted and used for that purpose.

(Whereupon, Plaintiff's Exhibit

J-11 was marked for identification.)

The next is a report dated December 1962 accepting a gift of \$25,000 to be used by the Urban Service Corps program which was privately funded and the total amount of \$75,000 was made initially for this project which was accepted and used for that purpose.

(Whereupon, Plaintiff's Exhibit

J-12 was marked for identification.)

Next, January the 10th of 1963, an educational

facilities laboratory foundation financed by the Ford Foundation, grant of \$22,500 for the study of a problem of physical facilities needed for the training of trainable children to be conducted jointly by St. John's Development Services for Children and the Board of Education, for handicapped children in other words, and the money was accepted to develop a special school for severely mentally handicapped children.

We made application to the Myer Foundation for funds for secondary schools and this project was not approved by the Myer Foundation.

Q It was not approved?

A It was not.

Q This plan was approved by the Board and submitted to the Myer Foundation?

A The application.

Q But it was not approved by the Foundation?

A That's correct.

Ref
(Whereupon, Plaintiff's Exhibits
J-13 and J-14 were marked for
identification.)

Next is dated February the 20th, 1963 for acceptance by the Board of Education of a fund of \$200 from the Rockport

Fund to the Urban Services Corps to be used in opening buildings on Saturdays.

Q And that would be Exhibit 15 and that was accepted and used?

A That was accepted and used.

(Whereupon, Plaintiff's Exhibit

J-15 was marked for identification.)

Next, February the 20th of 1963 the Superintendent reported to the Board of Education a gift of \$11,000 from the Junior League of Washington to equip a library at the Truesdell Elementary School which was accepted and used for that purpose.

(Whereupon, Plaintiff's Exhibit

J-16 was marked for identification.)

On April the 17th, 1963 a report was made and the Board of Education accepted a gift of \$500 from the 100 Club, Incorporated in Silver Spring to be used for training boys from the Boys Junior and Senior High School in upholstering. This was accepted and used for the purpose indicated.

(Whereupon, Plaintiff's Exhibit

J-17 was marked for identification.)

June the 26th of 1963 the Superintendent reported to the Board of Education receiving a grant of \$35,500 from the Ford Foundation for the language arts program and he pointed out that the Board of Education had received up to this time \$179,500 from the Ford Foundation for this project.

(Whereupon, Plaintiff's Exhibit
J-18 was marked for identification.)

June the 26th of 1963 a report to the Board of Education of a grant of \$2,300 from the Eugene and Agnes E. Myer Foundation to be used for special consultation services for the LaSalle Elementary Laboratory School and also there was a report of \$17,000 from the MacFarland Talent Search project and a report of \$3,525 to underwrite the cost of a demonstration program in the use of television in training elementary mathematics teachers. These funds were secured from the Myer Foundation.

Q Were they received and used for purposes specified?

A Yes.

(Whereupon, Plaintiff's Exhibit
J-19 was marked for identification.)

The one immediately following is July 1, 1963 and

it is actually a report of \$500 for the adult education department from a donor who is not mentioned for the purpose of making an evaluation to contribute to adult literacy program being developed directly with the Board of Education and other agencies. This money was received and used for the purpose indicated.

(Whereupon, Plaintiff's Exhibit
J-20 was marked for identification.)

Next is dated July 17, 1963 and it speaks of a fund of \$65,000 which was for the repair of Dunbar High School under the leadership of the then Attorney General Robert F. Kennedy. In addition to reporting the use of this money for renovations of swimming pool, this perhaps may not be pertinent to the gift aspect, but it made it possible for us to request a change in budget allocation.

Q When you say a change in budget allocation, do you mean that it made the request less than it would have been?

A Well, we had an item in the budget of approximately \$65,000 for the repair of the Dunbar High School and since the repair was taken care of from private contributions, we could delete that item from the budget and in lieu of that

item we asked for a substitution of four items costing \$65,000.

Q So that they granted that substitution?

A To my recollection, only part of it was granted.

Q Do you recall how much?

A I cannot recall.

(Whereupon, Plaintiff's Exhibit

J-21 was marked for identification.)

Next is a \$5,000 grant for the promotion of the President's Program to Prevent School Dropouts used in the summer of 1963. This was used for the purpose of employing counsellors to visit homes in an effort to get dropouts back into school.

(Whereupon, Plaintiff's Exhibit

J-22 was marked for identification.)

Next is a \$1500 anonymous amount donated to the Urban Service Corps for providing shoes and clothing and school supplies for indigent children.

Q And that was accepted and used?

A That's correct.

(Whereupon, Plaintiff's Exhibit

J-23 was marked for identification.)

Next is November the 29th of 1963 in the amount of \$75,000 from the Eugene and Agnes Meyer Foundation to support the Urban Service Corps which was accepted and used.

(Whereupon, Plaintiff's Exhibit J-24 was marked for identification.)

Next is a receipt for a check in the amount of \$2500 as part payment of a total of \$10,000 to establish a library to be named the Higginson Memorial Library at the LaSalle Elementary Laboratory School which was accepted.

Q And used?

A Yes.

(Whereupon, Plaintiff's Exhibit J-25 was marked for identification.)

THE COURT: How many more do you have?

THE WITNESS: We have quite a stack of them, Your Honor.

THE COURT: We will recess at this time until 9:30 tomorrow morning.

(Whereupon, at 5:10 p.m. the hearing was adjourned to be resumed at 10:00 a.m. on Wednesday, July 20, 1966)

BY MR. KUNSTLER:

Q Lastly, Dr. Hansen, I shw you a dœocument dated June 21, 1966 with reference to the Stern Fund and ask you if you can identify that document as an official document?

A It is an official document.

Q What, in general, does it have to do with?

A This has to do with the project called Partnership Plan, under which schools may volunteer to make a contribution to a partner school where the resources are somewhat less available, backed up by the matching contribution from the Stern family foundation.

Q Then as I understand it, the more affluent school would agree to give money to the less affluent school, and that sum would be matched by a fund from the Stern Foundation?

A Correct.

Q I would like to offer this as J-27, it is an official document of the District Schools.

Your Honor, we have discovered a duplication. The letter of July 1, 1963 is a duplicate of a letter already in evidence. I would like to withdraw the lead page and have J-26 start on the next one instead.

THE COURT: Let it be so.

(Plaintiffs' Exhibit J-27
was received in evidence.)

MR. KUNSTLER: Your Honor, to complete the question of Federal funds in the school system, we have received from the Corporation Counsel three documents which I would like to offer into evidence: I-8 is a summary with details of projects funded under the Elementary and Secondary Education Act of 1965. We have the documents all together under I-8. They are various projects and if no objection, I will offer those into evidence as our I-8.

I would like to offer I-6, which is a summary of projects under the Impact Aid Act, and I-7, which is a summary of special projects throughout the school system, both from fiscal 1960 --estimated thru fiscal 1967, of special projects financed in whole or in part from Federal funds. All documents received from the Board of Education.

DEPUTY CLERK: I-6, 7, and 8.

MR. REDMON: May I see those? (documents handed to Mr. Redmon.)

(Plaintiffs' Exhibits I-6, I-7, and I-8 were received in evidence.)

BY MR. KUNSTLER:

Q Now, Dr. Hansen, with reference to the drop-out problem in the District of Columbia School system, it is the

understanding of counsel for the Plaintiffs -- I withdraw that. Would you define for the record what a drop-out is?

A Drop-out is any student who has left school for any reason and is not attending school of any kind, who has not completed requirements for the high school diploma.

Q Now, as I understand it, there is a compulsory education law in effect in the District of Columbia, is that correct?

A That is correct.

Q Is there an age limitation as to when a child must attend public school?

A The requirement by law is from the age of 7 to the age of 16.

Red Q So if a child leaves school prior to the age of 16, is there a procedure in the District School system by which that child can be brought to school -- a truancy system?

A There is an Attendance Department which has responsibility of enforcing the attendance Act.

Q Is the Attendance Department under the supervision of the Superintendent of Schools?

A It is.

Q If the parent then refuses, the parent can be imprisoned, is that also correct?

A I am not aware of that as part of the penalty. A fine may be likely, but I do not have in my own mind or impression the act permits imprisonment of the parent.

Q Does the Act provide anything as far as you know for a compulsory producing the child? Does it operate against the child at all so the child can be physically produced for the school system?

A The Act does not operate ^{against} the child.

Q Now, as I understand, under the definition of drop-out which you have given, is it not true that most of the drop-outs in the Washington, D.C. school system as far as you know are Negroes?

A This would be clear with the proportion of 90% Negroes that we have.

Q Do you know yourself what percentage of the drop-outs -- let me withdraw that. When you used the term drop-out before, I would like to know when the term first begins to apply to a student --after the juvenile court procedure or before?

A We are talking mostly about children --youngsters-- who leave school beyond the age of 16.

Q Over whom there would be no Juvenile Court procedure at all?

A Correct.

Q Would you say the amount prior to 16, with exception of the group you mentioned --15 $\frac{1}{2}$ -16-- is Negro?

A Very small.

Q So of the group from 16 on, you say that is predominantly Negro and I ask the question now, what percentage of that group in your own knowledge, is White?

A We do not keep the record by race.

Q That was in one of the answers to one of the interrogatories, we were informed there was no information by race as to drop-outs and therefore, I assume your information as to the number of Negroes, or at least the general category of how many Negroes over White, without giving percentage figures, is based on the fact you say there is 90% Negroes in population of the schools, is that correct?

A That is correct.

Q Dr. Hansen, in your book, Four Track Curriculum for Today's High Schools, you discuss the problem of drop-outs, do you not?

A I do.

read

Q And I want to/you one portion and then ask you a question about it. You say, on page 156 of the book, and I quote it to you --the paragraph:

"A special study of the retention rate of the Negro students shows a dramatic increase from 40% in 1956 to 63% in 1963. The traditional high drop-out rate of Negro students is clearly being reversed. The upturn is coincident with the introduction of the track system which it may be presumed is a significant contributor toward the downward trend following desegregation in 1954."

I want to ask you, Doctor, when you researched your material for the portion of the book beginning on page 156, which is entitled The Basic Curriculum Increases School Holding Power, you did then make a study of Negro drop-outs, did you not?

A There was a special study made at my request from attendance records. We can get the information but we don't report drop-outs or other data traditionally by race unless a special study request is made.

Q Is it difficult for you to get the information of drop-outs from 1961 --say from '60 to '65? Would they be available?

A I could check into that, I think we have already accomplished a part of this task but would have to check.

Q Then you say the information could be obtained; with the Court's permission, would you submit the information as to the number of Negroes and number of Whites who fill the drop-out classification as far as the District of Columbia School System is concerned from 1960 thru 1965?

A Very well, I'll make a maximum effort to get that information.

THE COURT: Doctor, what counsel has in mind, I think, is getting it if you have already colated it in various places. I don't think he has in mind going thru every student file for the last five years picking it up.

A The only way we can get the record by race is to identify the drop-out by name and then check his membership card which does designate the race. This is what is required to accomplish the study that counselor wants done. It is a very difficult and involved problem in terms of individuals because you have to do this on an individual basis.

BY MR. KUNSTLER:

Q I realize this could be a Herculean task. From reading your book, I had the impression you had done this already in coming to your conclusion when you said "traditionally high drop-out rate of Negroes," you must have based that on something not just the 90-10% population?

A Your Honor, do you mind if I take a look at the procedures involved in this? They may be much more simple than I believe they are, and will supply quickly available information and if the Court wishes us to make a person-by-person account, we will of course undertake it.

THE COURT: Suppose you just try to find out what is quickly available. I think that might be satisfactory.

A Very well. Thank you.

BY MR. KUNSTLER:

Q Doctor, I might indicate to you that according to the Pucinski Report, and I state this to you not to state that it is for the truth of it, but the report states 95% of the drop-outs are Negro and 5% White or some other race, and I wondered whether you would care to comment whether that would more or less comport with your information you received when you were writing your book?

A I would not want to rely on data there because I think the data is somewhat different from import, but the 95% strikes me as being a reasonable estimate, keeping in mind our Negro-White ratio is 90-10, so I would, using simply the estimating method, say this is perhaps not far wrong.

Q Now, Doctor, would you also venture a guess as to whether the 95% figure also existed from 1960 up to the time of the writing of your book, which is 1964?

A No, I can't because there has been a change in the proportions over the past years, as you know, so I will not attempt an estimate.

Q Now, is it a fair statement, Doctor, to state that the overwhelming majority of all drop-outs, whatever the race for the moment, are from the basic track or from the lower portion of the general track?

A No, unfortunately from the studies I have seen made, leaving school is not exclusively the result of academic difficulty. We know there are many drop-outs who have extraordinary intellectual capacities and therefore will avoid making a generalization of the kind implied in your question.

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Q Well, let me ask you this, Doctor: When you use the term in one of your documents as discharges from the school system, this does not indicate drop-outs?

A Not specifically. A discharge may be to another school.

Q And I show you C-5, which is an official document. I have no Corporation Counsel number. I ask you what that document is?

A This shows the discharges from Washington schools to other schools --Maryland, Virginia, other states and territories, and to non-public schools in the District.

Q These would not indicate the reasons for the discharge or the race of the person discharged, would it?

A That is correct.

Q I would like to offer into evidence Plaintiffs' C-5.

DEPUTY CLERK: Plaintiffs' Exhibit C-5.

(Plaintiffs' Exhibit C-5
was received in evidence.)

MR. REDMON: May I see it, please?

(Document is handed to Mr. Redmon.)

BY MR. KUNSTLER:

Q Now, Dr. Hansen, I show you Plaintiffs' C-4 and

MR. KUNSTLER: I would like to offer into evidence, less the red writing, C-2.

DEPUTY CLERK: Plaintiffs' Exhibit C-2.

(Plaintiffs' Exhibit C-2
was received in evidence.)

BY MR. KUNSTLER:

Q Doctor, you have made a study, have you not, of the most frequent causes of drop-outs?

A That is correct.

Q And as I understand it, that the single largest cause of drop-outs, according to you, is the factor of lack of interest in the work, is that correct?

A I believe so.

Q And the second biggest seems to be the question of employment, is that correct?

A I believe so, yes.

Q Do you have at your fingertips the other causes after these two main causes?

A You have them in the document there. We can save time if you could read or I could read them such things as to get married, go to the armed services, low academic record, I believe, and such factors as that are listed.

Q I will show you a document, if you will just bear with me one moment --I thought I had a document that was official-- I do not have it. I will ask you whether such factors as physical disability comes to some people dropping out?

A Very slightly, I believe.

Q What about mental incapacity?

A This is not a factor reported. You are asking me to draw from my mind; I believe it is not listed.

Q I am not asking for exact details --

A Children are not dismissed because of lack of mental ability because of the curriculums we have. They often leave school voluntarily --shall we say retardation.

Q What about institutionalized?

A Yes, we have a large number of girls that become pregnant out of wedlock who leave school.

Q With the war in Vietnam, do you find there is some drop-outs occurring through the intervention of the armed services?

Q We have no indication that the armed services is either encouraging or drafting students -- encouraging students to leave school or drafting them out of school We

have no indication of that. The attitude, as always, we do not want to take the child from the school.

Q Doctor, does the fact of the economic background of the pupil concerned have any relation to a drop-out, that he would have to work to support a family?

A There is no question about that , and may I point out, because of the fact so many students listed "need to go to work" as a reason for leaving school, that we have done many things to provide economic assistance to children. We have gotten scholarships for high school youths from the Woodward Foundation, we have the Urban Service Corps Fund which the Director calls a walk-around money --small items of money needed to get to and from school, etc. We have more than 1700 youngsters working parttime in the schools under the school work program which we initiated four years ago, and private money raised by various means, so that the school system must make an effort to find ways to keep youngsters going so they don't have to leave in order to make a living for themselves and families.

O Doctor, I show you pages 190 to 192 of the investigation of D. C. schools by the Pucinski task force and ask you in the interest of time whether this chart was furnished by--

Q Is it not a fact, Dr. Hansen, that the teachers in the basic track --take them for a moment-- are teachers approximately fifty percent of whom are temporary and almost none of hom have had courses dealing with mental retardation, special courses --

MR. REDMON: Objection, Your Honor. There has been no testimony concerning a statement such as that.

MR. KUNSTLER: I am not drawing on past testimony, I am asking if that is a fact.

MR. REDMON: That is a conclusion.

THE COURT: I think he is asking the Doctor whether or not -- I overrule the objection. I am not sure the question was finished.

BY MR. KUNSTLER:

Q I am going to rephrase the question in two parts. Is it not true, Dr. Hansen, that the teachers in the basic track throughout the school system are approximately 50% temporary?

A That is a fair estimate.

Q And is it not also true, Dr. Hansen, that the teachers in the basic track have had in almost every instance,

no courses whatsoever in what I call special courses for the teaching of the mentally retarded or mentally slow?

A I answer ~~not~~ to that question.

Q Just one last question, Dr. Hanse. Would it then be your testimony that the fact that the teacher is temporary, would have any effect whatsoever on lack of interest with reference to the basic students?

A I would draw no correlation whatsoever between the two facts, none whatsoever.

Q Now, you mention as the third --or one of the reasons which I think introduced-- pages 190 - 191 of the Pucinski hearings, one of the factors indicated was commitment to institutions, and I wanted to ask you, and I believe that is one of the important factors, is it not, possibly third in importance?

A I don't recall. It is in the documentation.

Q It is in the document, it will speak for itself. What does that mean "commitment to institutions"?

A It is self explanatory. A younger student has been charged with a violation of law, or has been placed under the control or custody of the Court, upon complaint of the parents

Mrs. Haynes testifies will solve the problem?

MR. REDMON: No, I don't believe so, Your Honor.

I keep getting back to the basic problem and by now perhaps you realize that this is the main person in this case, Julius Hobson. He has filed the suite and made the allegations and he has testified to them on deposition and I believe in all fairness to the Court and to counsel and to the parties that he should be required to testify before we get much more information from other people.

MR. KUNSTLER: Well, as I say, his testimony would be strictly limited to statistical material that he would present.

THE COURT: I do feel generally that although parties should be allowed to stay in the courtroom it would be better if they testified as soon as possible, but in any event we will go along and we will use the time for the Superintendent and maybe the problem will not arise. If it does, then we will have to meet it.

MR. KUNSTLER: Thank you, Your Honor.

(Whereupon, counsel returned to the counsel table.)

(The witnesses resumes the stand.)

BY MR. KUNSTLER:

Q Dr. Hansen, you will recall that when we placed the

map which is marked N-7-C on the board on Monday and then it was furnished to the corporation counsel with reference to any change of boundaries, we were dealing with optional zones and I just want to talk to you for a moment about optional zones which I believe we left open to some degree in that testimony.

You will recall you indicated that the optional zone which we defined as Wilson-Western, or W-W on the map in the lower left-hand corner as you placed it, has been eliminated, is that correct?

A Yes, that is the way I testified Monday.

Q That's right. Now, as I understand it, a new optional zone in another area of the City, principally between Western and Dunbar was then created, is that correct?

A My understanding is that an optional zone was changed as to direction that existed on the schools designated.

Q Is that the zone which was formerly, and I am now pointing to the dotted line, to the East Potomac Park area, the lower right-hand corner of the map as we look at it, which is labeled in blue DB and above which has been written the initials DW in red?

A That's right.

Q Is that the optional zone that we are talking about now?

MR. REDMON: I object at this point. If it please the Court, we have given the boundary lines to counsel with respect to all of the various schools. If Dr. Hansen is only being asked to testify generally, I have no objection subject to confirmation as to exact lines. This may be a technical objection as the testimony proceeds, Your Honor, I don't know.

THE COURT: Well, we will proceed with that reservation.

MR. KUNSTLER: In fact, at this moment, Your Honor, I will introduce into evidence the boundary lines which we have received from the corporation counsel which I believe is the boundary lines for the elementary schools 1965 to 1966 being N-1 and N-2 are the boundary lines for junior high schools 1966 to 1967 and the boundary lines -- N-3 for the senior high schools 1966 to 1967.

THE COURT: You are saying N?

MR. KUNSTLER: N like in Nelly, Your Honor.

THE COURT: Without objection the record may show

Exhibit C-5, C-4, C-2 and C-13 in addition to Exhibit N-2 and N-3 are admitted into evidence.

(Whereupon, Plaintiff's Exhibits
C-5, C-4, C-2, N-2, N-3, C-13
were admitted into evidence.)

~~BY~~ MR. KUNSTLER:

Q Now, Dr. Hansen, as I understand it, from the boundary lines which have been submitted to us, referring now to N-1, these are the elementary school boundary lines which I assume are unchanged for the coming school year?

A Let us assume that there are no significant changes.

Q Now, significant changes have occurred in the boundary lines as to senior high schools and junior high schools, is that correct?

A Senior high schools principally. I know of no significant change in the junior high schools.

Q If there are any changes in the junior high they would reflected in N-2?

A That is correct. They are all specified there.

Q Now, talking for this moment about N-3 this is the senior high school, is that correct?

A I presume so, yes.

Q And that is the one that we are talking about at this moment, the one that formerly lay between Dunbar and Ballou, as I understand it, and the change is really not a change in boundary, but a change in direction, is that correct?

A Yes.

Q And the change in direction is that it will now be known as Dunbar/-Western boundary, instead of Dunbar-Ballou boundary?

A That is correct.

Q Now, Dr. Hansen, this boundary change that has been referred to in Plaintiff's N-4-A is the boundary line we have just referred to?

A That is correct.

Q Thank you. Now, is the situation that now exists that people living in the Dunbar-Ballou optional zone which we will refer to for the sake of convenience now to the Dunbar-Western optional zone, transfer zone, those people may now select whether to go to Dunbar or to Western, is that correct?

A That's correct.

Q And if I understand it, Dunbar is a predominantly

negro school, is that correct?

A That is correct.

Q And you have so testified that Western is a racially mixed --

A Balanced.

Q Racially balanced school?

A Yes.

Q Do you know yourself what the general racial composition is of the people living in the Dunbar-Western optional transfer zone?

A I am unable to give you that, but the racial composition of the children attending Jefferson is roughly 60 or 65 per cent negro. These are the children who, in the main, would have the choice of going to Western or Dunbar.

Q And the people attending Jefferson had come from this area, too, had they not?

A They do not. They come actually from --

Q Well, a portion of it?

A From a small portion, yes, some small portion.

Jefferson is what we call an open school so that I am not able to tell you the proportion that comes from that particular zone indicated by the dotted lines.

Q Jefferson is approximately 30 to 35 per cent white population, is that not correct?

A This is my estimate, yes -- roughly those would be the figures.

Q So that if there are white persons living in the optional transfer zone they could now go to Western High School, is that correct?

A That's correct.

THE COURT: Do I understand that this optional zone had been Dunbar-Ballou optional zone and it is now changed to Dunbar-Western optional zone?

THE WITNESS: That is correct?

THE COURT: That is the only change?

THE WITNESS: That is the only change.

THE COURT: The zone itself is the same, but it is just that the choice has been changed?

THE WITNESS: That is correct, and the reason for that I think should go in the record, if you would be interested.

THE COURT: Go ahead.

THE WITNESS: Ballou High School has become overcrowded

so that it can no longer be considered an open school.

Dunbar is also overcrowded so that following the policy of allowing the pupil to attend an open school, Western is the only one available on that policy basis. So therefore, until Western becomes overcrowded by at least 10 per cent which is our maximum for open schools, that school is available, not only actually to people living in the zone indicated by the dotted lines, but the students from overcrowded schools anywhere in the City.

THE COURT: Thank you.

BY MR. KUNSTLER:

Q Dr. Hansen, is Ballou what you would call a predominantly negro school?

A Yes, yes, it is over the 50 per cent mark, using that now as our agreed upon label for predominantly negro.

Q Well, it is considerably over 50 per cent, is it not?

A I think so, but I am not prepared to tell you precisely without checking the record.

Q Dr. Hansen, are you familiar with the area of Washington which known as the Southwest Redevelopment Area?

A Yes, sir.

Q And is that not an area or a portion of an area in

what is called the Dunbar-Western optional transfer zone?

A Yes, it is.

Q And that is not a predominantly white area?

A My answer to that would have to be I believe so, but I have no statistical facts, no evidence as to population distribution there.

Q Dr. Hansen --

THE COURT: This change in the option was for last year, or it begins next year?

THE WITNESS: It begins this year.

THE COURT: Thank you.

BY MR. KUNSTLER:

Q That would be the term starting September 1966?

A Yes.

Q Dr. Hansen, did you have any discussion whatsoever with any of the parents in the Dunbar-Western optional transfer zone prior to changing the direction of the flow?

A No discussion with parents at all. The decision, in my office the decision was made by the Assistant Superintendent, Mr. Koontz. This is his responsibility.

Q Dr. Hansen, if I indicated to you that Ballou

division as of October 21, 1965, and I am now reading from our P-3, I believe it is -- well, I believe the document will speak for itself. It is in evidence.

It is P-4, I am sorry.

Now, I would just ask you this -- in answer to one of my questions you answered that this area is substantially negro and I would ask you if these figures as far as Ballou was concerned would help you?

A Yes, these figures show that Ballou is predominantly negro. Last year's enrollment as of October the 21st showed approximately a three to one ratio.

Q Now, what about Dunbar?

A Dunbar has three white students in a total enrollment of 1511.

Q That was as of October 1965?

A That's correct.

Q Now, Dr. Hansen, there are no more new optional transfer zones, are there?

A I believe not.

Q For high schools?

A I believe not.

Q Now, as far as the junior high schools are concerned,

I believe that we had discussed that the last time ~~as~~ outside of the ones that you testified to, there are no more there, are there?

A This is my understanding.

Q Now, Dr. Hansen, during the last five or six years you have constructed some new schools, have you not?

A Yes, sir, a very large number.

Q And how many would there be in the elementary school range in grades one to six?

A For exact numbers I would prefer to refer to the table which shows the construction within the recent years.

We have such a table available. May I get that document?

Q Well, it may not be necessary, Dr. Hansen. I am going to ask you this question:

Have any of the new elementary schools, if you can recall, been built on what we would call the border between the predominantly white neighborhoods and the predominantly negro neighborhoods, if you can recall?

A None that I could describe in that particular manner because the predominantly white schools are out of the

geographical range of the overcrowded schools where we needed new schools.

Q So is it fair to say, Dr. Hansen, that all of the new schools which have been built and which are today, for example, what we would call predominantly negro schools in the elementary school range, were those in predominantly negro neighborhoods? Is that correct?

A They were built where the children lived.

Q Which would mean that they were built in the predominantly negro neighborhoods?

A These are the overcrowded sections of the City.

MR. KUNSTLER: This time, Your Honor, I would like to offer into evidence a decision by the Commissioner of Education for the City of New York, restraining the New York City Board of Education from building elementary schools, seven of them, in areas of the City which were predominantly negro areas of that City accompanied by the petition to the Commissioner of Education by Milton A. Galamoson and others and it is dated June 24, 1966.

I would like to offer this and the accompanying petition and I have been informed by Mr. Redmon that his objection is not to the authenticity of the document, but to

BY MR. KUNSTLER:

Q Now, Dr. Hansen, so much for the optional zone question that we had left open -- I would like to ask one more aspect however on the Washington educational picture which I have not covered with you and that is what is called the Amadon plan which you are completely familiar, is that not correct?

A That is correct.

Q Would you describe for the record what the Amadon Plan is in brief?

A It is an effort to establish the strengths of organized carefully planned curriculums taught by teachers with emphasis on basic skills, with emphasis upon structural analyses in connection with the teaching of reading beginning with the kindergarten, with emphasis upon setting up the content of the learning experience from the earliest level of kindergarten on up, with systematic instruction in accordance with the curriculum guidelines all related to the characteristics and needs of the children in the classroom.

This is essentially an effort to bring the best that is known about child ~~work~~ and development and the need

growth

for variability in curriculum approaches, flexibility, and a structured kind of educational content, which will ensure the strength in intellectual development of all the children.

Q And the name ^{Amadon} ~~Amazon~~ Plan comes from the Amadon Elementary School which is located here in the School District, is that correct?

A It does, it does.

Q And is the Amadon School one of those schools which we would call predominantly negro or is it predominantly white?

A It is predominantly negro.

Q Now, as I understand it from what you have stated as to the plan which was adopted it started with the Amadon School itself, initially, is that correct?

A That is correct.

Q And is it the idea that plan is to be extended throughout the City?

A That is correct.

Q And has it been extended throughout the City?

A We have asked the principals and teachers to adapt the plan to their particular situation.

Q I see.

A I would be less than realistic if I were not aware of the fact that we have to depend upon the teacher, namely to depend upon her own methodology rather than leave the impression on the record here that we simply devise a program and say: "Here -- you must teach from this program," and impose that on the teacher. That is not effective, it does not work; we do not operate that way in our school system. But in terms of operational, administrative procedures we have asked all of the elementary schools to use the so-called Amadon concept.

Q Now, one of the features of the Amadon concept as I understand it from my lay point of view is that the plan is what is called a teacher centered plan, is it not?

A It is pupil-teacher centered plan.

Q What do you mean exactly by that?

A I mean by that, as I have just said, that we place the teacher in the responsible role of teacher predicated upon study and understanding of the nature of the children, their characteristics, involvement in processes of learning, and so forth, so therefore we call this a combination of the best elements of the new and the old -- as I have said in my

book, trying to bring together into the teaching situation the strength of the teacher and the study of the child.

Q Would you say that the fundamental idea of the Amadon plan is to stress law and order in the classroom, to have the rigid disciplinary program in the classroom?

A I can't answer a question of this kind.

Q Well, let me put it this way, then: In reading your book which I have here with me, I have come to the conclusion that the basic makeup of the Amadon Plan was that there would be a great stress on order in the classroom?

A This is correct.

Q And that there would be a very, very rigid discipline curriculum?

A This is incorrect.

Q This is incorrect -- what is the aspect as to the curriculum?

A We have developed a curriculum, or curriculum guides, which outline the contents, the basic contents for the guidance of teachers through the grades, but these guidelines are guides to teachers. They are not a guideline, say, for the third grade imposed as a teaching situation upon the third

grade classes year after year. They are an analyses of the needs and characteristics and levels of achievement of the children in that class but there is the kind of fluidity and flexibility which relates to the characteristics of the children so that the children in the third grade grouping, which incidentally is only a name of a grouping, may be taught with more advanced materials or less advanced materials, depending upon the achievement level of the child.

So, I want to make it very clear that flexibility is the key to effective educational programs and that when we stress the importance of studying the child and his characteristics in this book, and if you read it carefully you will note that this also dominates the effort, while keeping in mind that if we are going to teach a child and establish development content, it also involves orderly processes.

Q In relation to that concept?

A In relation to that concept, if we are going to do all these things we have go to do this with the nature of the child in mind.

Q Would you describe how the Amadon Plan relates to the track system, Dr. Hansen?

A The two are really not dependent one upon the other. We do ask for a reduction of the ranges of differences

in classrooms but this is not what we call the track plan.

Q How about --

A We have a basic curriculum in Amadon as I have just set forth, in that sense, but we do not have dependence upon the track system for the Amadon process.

Q But one of the fundamental tenets of the Amadon Plan is that the teacher would be teaching what you described in your book, as I recall it, homogeneous groups of children?

A Sir, I would like for you to find in my book my reference to homogeneous groups. I have never used that word to define a class and I would like to be informed.

Q Well, let me ask you this: Is the idea of the Amadon Plan that the classes will be as homogeneous as possible within the framework of reality?

A The answer to that is yes, reducing the range of differences.

Q Well, that was --

A I hope you understand and I hope this record will show that there is no such thing as a homogeneous class. All that is ever done is to reduce the range of differences in a class in relation to the level of the class, but anywhere it is heterogeneous. We are talking about levels of honors,

basic or what have you, but it is not homogeneous. You simply reduce the ranges of differences where you would not have a teacher trying to teach a child who can do twelfth grade work at the same time as she struggles with a second grade pupil.

Q As far as the current figures for Amadon are concerned, and when I say current, I am speaking now of October 21st, 1965, and I am referring to our Exhibit P-4, and I ask you if the Amadon figures here as to track assignments, if you would read this into the record so that it would be easily available in this portion of the testimony --

A Yes, Amadon School had 25 members in the special academic class on this date.

Q Would you give the racial breakdown?

A The racial breakdown was three white and 22 negro and 633 in the general and 39 in the honors.

Q Are they not broken down into racial divisions?

A No, they are not. We will be happy to get this information for you specifically, and I think we are doing that.

MR. KUNSTLER: Your Honor, may I say that this is

B-4 and not P-4.

BY MR. KUNSTLER:

Q Now, one more aspect of the Amadon Plan, as I understand it from the book, unlike the situation in other schools there is a much greater emphasis on phonetics, is there not? I mean in the Amadon Plan with reference to reading than there is in the normal reading classes throughout the City?

A I cannot answer that question.

Q Well, I am just trying to indicate from your book the impression that I got which is that in the Amadon School --

A If you put that question: Is there a great emphasis upon phonics, the answer will be yes.

Q Oh, did I say phonetics -- I am sorry.

A Well -- phonics -- phonetic approach.

Q Right. It is the same thing, is it not?

A Essentially.

Q Now, as one other aspect which seems to me to be different than regular classroom situation in the District of Columbia school system, isn't it a fact that they have a very, very narrowly prescribed purpose of instruction -- is

that not one aspect of the Amadon Plan?

A Before I answer the question, may I make it clear that the use of phonics is stressed throughout the elementary schools throughout the system.

Q But it is also a very important aspect, isn't it, of the Amadon Plan?

A Yes, this is. I want to make that clear.

MR. REDMON: If Your Honor please, while I am not losing sight of the reason for this examination, I don't see the relevance of this.

THE COURT: Would you state the purpose of it?

MR. KUNSTLER: Well, the purpose of the offer, Your Honor, of this testimony is to indicate one more aspect of the school system in which negroes are intimately involved in the experiment that was tried in the Amadon School. I will be through on this in about three minutes, but I just want to round out the picture that we have before us. Dr. Hansen has written a book on the Amadon Plan and an equivalent book on the track system, and I wanted to be clear about what it was and there has been a great deal of controversy about this plan and I will be through about this very shortly anyway.

THE COURT: Very well. You may proceed.

BY MR. KUNSTLER:

Q To bring it to a close, Dr. Hansen, you have had some difficulties, have you not, with the Amadon Plan in the City of Washington as far as extending it from Amadon itself, is that not correct?

A Would you define what you mean by difficulties?

Q There has been opposition, has there not, in many quarters of the City both from the Board of Education itself and from the principals?

A If you ask me the question: Is there a difference in point of view as to Amadon and, say, a progressive program which tends to center primarily upon the child, yes, there are differences of views, philosophically, but to date there has not been the kind of opposition which would suggest there be widespread request that we abandon the concept.

Q If I may quote you, and I am quoting from the Washington Post of February the 7th, 1966, and I will read the whole paragraph and then ask you if this is not an essentially true statement.

"Hansen said the Amadon type school program was

not working well which he attributed to the tensions between the administrators and the school board. He said he encountered no right wing activity but added there is a tendency to make an ideological issue out of the Amadon Plan which is absolutely wrong to do."

A Do you have the context in which that statement was made?

Q Well, the context is --

THE COURT: Show him the article.

BY MR. KUNSTLER:

Q I will show you the complete article.

A Well, I know the context, but I wondered if you did.

Q Read this article on the left-hand side.

THE COURT: Well, he said he is familiar with it.

THE WITNESS: I am aware of the statement.

BY MR. KUNSTLER:

Q Is that a correct statement?

A The reason I asked you a question was if you understood the background of the statement because it seemed to me that your question was slightly incomplete. That statement does not refer to Washington or to the administration of the

school system or to anyone in Washington.

Q It refers to the national situation, is that what you were referring to?

A No, that is incorrect.

Q Doesn't this statement relate to criticism which you received from, for example, the superintendents on the West Coast as to the Amadan Plan, calling it a straight jacket, if I understand it?

A This is the basis of that statement.

MR. REDMON: If Your Honor please, I think here again we are getting into the question of judgment in the development of a school.

MR. KUNSTLER: I withdraw the question, anyway, Your Honor.

THE COURT: All right. You may proceed.

BY MR. KUNSTLER:

Q Doctor, I believe I asked you a question yesterday as to whether you had a proposal to submit into the record as to a model school which you had introduced, I believe, in January of 1964 to the Board. Were you able to find this?

A I have not been in my office since, except for the

you but I wanted to take up just one thing. There are many places in the record which we have left open for inclusion of documents and the like and I won't go through each one of them with you, but I assume that the corporation counsel, with the transcript in front of him, will make sure that all of the holes that are in the record will be filled, such as this model school proposal and the rest, is that understood, throughout?

THE COURT: I think Dr. Hansen has a list of the things he has to get.

THE WITNESS: Yes, I have made a list and I am sure that corporation counsel has also, but I will double check with him.

BY MR. KUNSTLER:

Q Well, it will be in the transcript?

A Yes. If I have happened to miss anything we will be happy to supply it in the form of an official document, certainly.

Q All right now, Dr. Hansen, just a word in conclusion of this interrogation: I want to ask your opinion of one aspect and that is with reference to the Board of Education and I want to read to you a statement in the Pucinski report and ask you whether this is a true statement, or not, as

at page eight: "What has happened in Washington is that the Board in effect abdicated its policy making function to the Superintendent of Schools."

Is that a true statement?

A It is an unjustified statement.

Q Dr. Hansen, I would like to ask you this question: You have been Superintendent since 1958, is that correct?

A That is correct.

Q Could you give us any instance where a recommendation by you to the School Board was overridden?

A I suppose I should not introduce this into the record, but the Board of Education has on one occasion earlier in 1958, going back that far, rejected a proposal that cafeterias be built in elementary schools.

Now, I hesitated to make that reference because it appears to be a criticism of the Board, I think, on the surface of it, but they rejected our proposal, or modified it, for conditions which had to do with the availability of funds.

The record will show clearly that the Board of Education and Superintendent have worked together as a team, in a sense, rather than one being subordinate to the other

and the Board has never failed to react on its own impressions concerning projects and proposals.

Q Doctor, is your testimony then that with the exception of the cafeteria program --

A I didn't testify. You asked me for an example --

Q I just want to finish the question.

A And I gave you an example.

Q I just want to finish my question. You say that you have been Superintendent for some eight years now and during that period the Board of Education has overridden you, shall I say by vote. Has that happened on any project proposed by you more than five times?

MR. REDMON: Objection, Your Honor. Suppose the Board of Education does approve the proposals of the Superintendent, could that possible mean that the Board of Education is a rubber stamp for the Superintendent? If that is what they are trying to show, I don't think it indicates anything more than the proposals are properly presented and apart from that and the fact that they accepted I do not think is relevant.

MR. KUNSTLER: Your Honor, what I am trying to determine is whether we can establish who is essentially

responsible for the conditions in Washington, D. C. for the school situation here and whether the Board merely goes along with all suggestions of the Superintendent, or whether it has any policy making function. I was merely trying to ask him to establish that fact for the record.

THE COURT: Well, I will sustain the objection. I think it is irrelevant. It is a question of what is being done and the Board and Dr. Hansen are both defendants in this law suit as I recall.

BY MR. KUNSTLER:

Q Just on the cafeteria question, do all the schools have cafeterias today?

A I knew I would regret raising that question.. Unfortunately, no.

Q How many do still not have cafeterias and we will end the inquiry at that point?

A All of the junior high schools and senior high schools have them. All of the elementary schools which have been built within the last eight years have them.

We have a program which would make it, or which will bring into being as -- if money is funded, which will bring

into being if money is supplied, cafeteria facilities in all of the major administrative elementary units and for those which are too small to support a cafeteria, we will distribute food from central kitchens.

Q And lastly, I understand that according to the public press you have submitted your resignation to the Board shortly after it was announced, is that correct?

MR. REIMON: I object to that question, Your Honor.

THE COURT: I will sustain the objection.

MR. KUNSTLER: Your Honor, that concludes my questioning, but I would like to recall Dr. Hansen within the time limits that are prescribed and I know that he has to get away, solely for a question on the Strayer report, after the interrogatories, concerning that report.

We have asked for interrogatories as to which portions of the report have been implemented and we do not have them available yet. We expected it on the 19th, yesterday, but it has not come in and it may be that we will not have to recall him.

THE COURT: Well, Dr. Hansen will be available.

MR. KUNSTLER: I just want to reserve the right. I don't want to keep him in town and I understand he has

MR. ANKER: I would like to call, on behalf of the plaintiff, John Albohm, Your Honor.

Whereupon

JOHN ALBOHM

was called as a witness for and on behalf of the plaintiff and, having been first duly sworn, was examined and testified as follows:

DIRECT EXAMINATION

BY MR. ANKER:

Q Would you state your name for the record, please?

A John C. Albohm, Superintendent of Schools for Alexandria.

Q Is it Dr. Albohm?

A Yes, sir.

Q And you are Superintendent of Schools of the City of Alexandria?

A Yes, sir.

Q Is that correct?

A Yes, sir.

Q Dr. Albohm, will you state your educational background briefly?

A I have served as Superintendent of Schools in three

communities before coming to Alexandria, in New London, Connecticut, in Richfield, New Jersey, and in York, Pennsylvania. I graduated from the New York University AB and AM, doctor of education degree and I have taught, also, in the school systems from elementary to junior high school, senior high, college and I am old enough to understand the implication of the question.

Q Now, did you say how long you had been a superintendent of schools?

A Oh, about 20 years and in Alexandria, three years, sir.

Q Three years?

A March the first.

Q And you are here pursuant to a subpoena, is that correct?

A That is correct, sir.

Q And you have brought some documents with you?

A That is correct.

MR. ANKER: May these be marked?

(Plaintiff's Exhibit R-9 was
marked for identification.)

themselves.

MR. REDMON: Well, may we approach the bench?

THE COURT: Very well.

(Whereupon, the witness stepped down and counsel approached the bench where the following conference took place:)

MR. REDMON: As we indicated earlier, we do have objection to the comparison of the urban schools and the suburban schools and I understand from the line of testimony that this is apparently the direction it is going to take.

As we have indicated to Your Honor the urban school system, to-wit, the District of Columbia, stands on its own in terms of comparison and you couldn't possibly compare it with a community such as a suburban community that we are dealing with in this instance. Now, the claim is that we are racially discriminating or are against an economic group. There is no comparison with the suburban area. It is not a comparable situation and therefore I object to this examination.

THE COURT: I will overrule the objection. I don't know whether it is useful information, or not, at this moment, but I will overrule the objection so that we can have it in

case it becomes necessary.

MR. REDMON: Very well, Your Honor.

Red THE COURT: And Plaintiff's Exhibits R-9, 10, and 11 are admitted.

MR. REDMON: Subject to my objection, Your Honor.

THE COURT: Subject to the objection noted by counsel.

(Whereupon, Plaintiff's Exhibits R-9, 10, and 11 were received into evidence, subject to objection, as noted.)

MR. ANKER: May these be marked in the same series, the next being R-12, I think?

(Whereupon, Plaintiff's Exhibit R-12 was marked for identification.)

(Whereupon, Plaintiff's Exhibit R-13 was marked for identification.)

THE COURT: You may proceed.

MR. ANKER: Thank you, Your Honor.

BY MR. ANKER:

Alexandria schools system, exclusive of capital outlay and debt service for 1960 to 1961 through 1965 to '66 which is an estimate amount per pupil.

Q This is the cost per pupil for the entire system?

A Yes, grades one through 12.

Q Do you know whether the amounts that were broken down by school would vary greatly from one school to another?

A In the elementary schools they would not. In the so-called middle schools they would not. In the senior high schools, of which we have three, there would be some variance due to the courses that are offered. We offer vocational courses in our high schools and the cost per pupil would be higher in the high school.

Q But, as an estimate for the elementary schools, there would not be a substantial difference?

A There would be no substantial difference.

Q Per pupil in the school system?

A A difference in programs, but not in the cost.

Q Is that deliberate, or is that accidental, Doctor?

A That is by design, in our community to maintain an even quality of education on a high level, as we see it, by

local policy in Alexandria.

Q So that there is a deliberate policy in your school system to spend an equal amount per pupil in each elementary school?

A That's correct, sir. Yes, with one modification that there are some elementary schools that have children that need special programs. We could talk about special education programs, but obviously one has to spend more money per pupil in that respect.

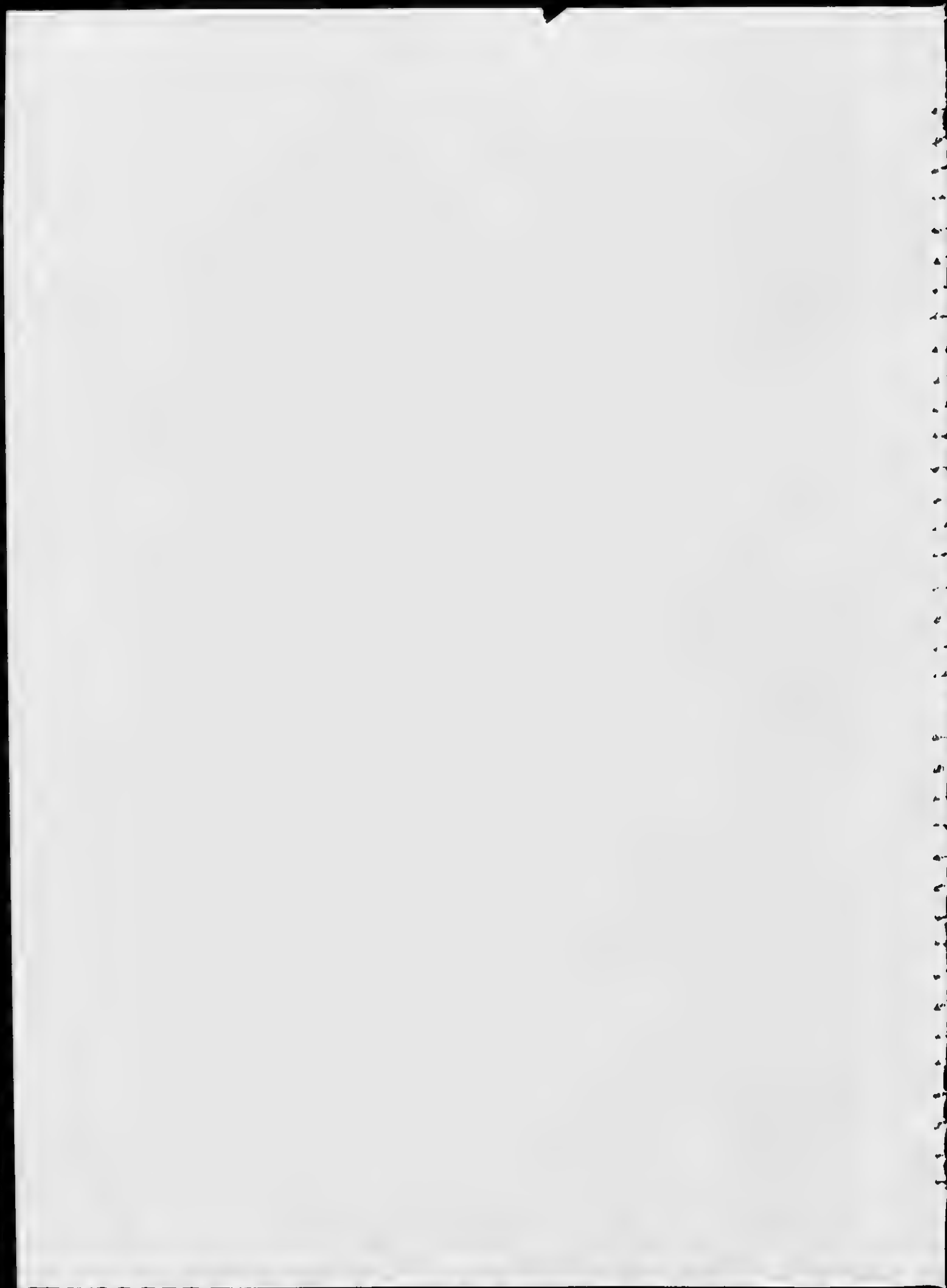
Q Would those be schools with the lower income children, or the higher income children?

A Special education -- that would not be related necessarily. Poor children or rich children -- there are poor children who are intelligent and there are rich children who are not intelligent.

Q And would the same statement as to the quality per pupil expenditures between schools apply in the category of what you would call, I believe you said, middle schools or junior high schools?

A Yes, counsellor, it would apply.

Q Would the same statement be true also as between



high schools in the school system?

A Yes, sir.

Q How many high schools do you have?

A There are three.

Q How many middle schools?

A There are three.

Q How many elementary schools?

A There are 16.

MR. ANKER: I offer Plaintiff's R-13.

THE DEPUTY CLERK: Plaintiff's R-14 through R-17
are marked for identification.

(Whereupon, Plaintiff's Exhibits
R-14 through R-17, inclusive,
were marked for identification.)

MR. REDMON: May the record reflect, Your Honor,
my objection goes to all documents and testimony concerning
such documents.

THE COURT: Let the record show that counsel has
objected to all documents offered in connection with the
testimony of this witness as well as to the testimony itself
and let Plaintiff's R-13 and R-12 be admitted. You may proceed.

(Whereupon, Plaintiff's Exhibits
R-12 and R-13 were received in
evidence.)

MR. ANKER: I would refer to two additional documents and show them to the witness.

BY MR. ANKER:

Q Doctor, I show you Plaintiff's Exhibit R-14 and I ask you if you can identify that?

A Counsellor, this is a summary of the California test of mental maturity for seventh graders for the school^{year}, or given January 18, 1966 to 1254 pupils indicating a national norm of 100 and then the intelligence quotient of those 1254 children.

MR. ANKER: I would like to offer R-14.

BY MR. ANKER:

Q Now, would you identify R-15 for the record?

A R-15 is a summarization of the fourth grade Lorge Thorndike intelligence test administered November 1965 to fourth grade students in the elementary schools and the number of equivalents and the IQ.

Q And the scoring is expressed in what terms?

A One hundred, again. And we are 102.

Q In other words, the national average was 100?

A Yes.

Q And your average is 102?

A Our average is 102.

Q And there is also a grade equivalent score?

A That is correct, this is the score for that grade.

Q Which would be?

A The fourth grade and in this particular building the IQ, in this table, the IQ in verbal, an IQ of 87 and a grade equivalent for the normal fourth grade with 3.3. We would consider that below grade.

Q In other words, par would be four?

A Par would be four.

MR. ANKER: I would like to offer into evidence R-15.

BY MR. ANKER:

Q What about R-16?

A Yes, counsellor, R-16 is the Iowa Silent Reading Test given to the seventh grade and this gives the percentage of children below grade level and the average score as

compared to seventh grade. Some averages are ninth grade and some are below grade.

MR. ANKER: All right. I offer R-16.

(Whereupon, Plaintiff's Exhibits
R-19 and R-20 were marked for
identification.)

MR. ANKER: How about R-17. Would you identify that?

A R-17 is a differential aptitude test, eighth grade, verbal percentage scores given in our school system among the four secondary schools indicated and this is a differential aptitude score for the eighth children.

Q Could you explain what does this score signify?

A That would indicate that divided into four percentiles, the 76 to 100 being first, and the differential aptitude test for the eighth grade level has the verbal percentage scores for the four schools and indicates the number of children in the schools who would be in the to percentile. In other words, you have one high school at 42 per cent who would be in the top percentile, but the same school in the 0 to 25 percentile would be in the lowest percentile for a certain percentage, in this case 42 per cent and nine per cent respectively. It is an analysis of aptitudes.

Q All right. And R-18 -- is that a similar test?

A Yes.

Q At another school level?

A Yes, well, this is eighth grade, this is the same thing. I think they may be duplicates -- no, one is October 1965 and one is October '65 eighth grade numerical percentage scores and verbal percentage scores.

Q So one is a verbal test and one is numerical?

A That is right, correct.

MR. ANKER: I would offer R-17 and R-18 into evidence, Your Honor, and may these be marked.

BY MR. ANKER:

Q Doctor, I show you Plaintiff's Exhibit R-19 for identification and I ask you if you would identify that, please?

A These are a number of books in the elementary libraries for the school year 1962 to 1963 through 1965 to 1966 -- the number of books per pupil.

Q In each school?

A In each elementary school. There is a second part to that.

Q And what about R-20?

A R-20 is a number of library books and textbooks per pupil in our school system of secondary schools.

Q This is for the secondary schools?

A Yes, sir.

MR. ANKER: I offer R-19 and R-20.

(Whereupon, Plaintiff's Exhibits R-23, R-19 and R-20 were marked for identification.)

BY MR. ANKER:

Q I show you Plaintiff's Exhibit R-21 and I ask you whether this document comes from the official records of the school system?

A This is a document that came from the official records and it deal with the elementary school libraries and it is a summarization of the State record as supplied by the library, or the head of the Library Service.

Q Does that indicate whether each of your elementary schools has a library?

A Yes, it does, counsellor. It shows that Alexandria City has a total of 16 libraries in elementary schools.

Q Each elementary school has a library, then?

A Yes.

Q Does each elementary school library have a staff, is it staffed with professional librarians?

A Yes, it is, trained librarians, professional librarians.

Q And does that document indicate whether in this program of libraries it is integrated, as an essential part of the educational system in your schools?

A Without question -- yes.

Q I show you R-22 and I ask you to identify that document.

A This, counsellor, is a description of the secondary school libraries 1960 to 1966 and there were five secondary schools because we define secondary schools with two to eighth grade until this last year and three high schools, so there were five secondary school libraries as supplied by the Director, of Secondary Schools.

Q And this one also comes from the official records of the school system?

A Correct, the Director's records.

MR. ANKER: I offer R-21 and R-22, if it please the Court.

(Whereupon, Plaintiff's Exhibits
R-21 and R-22 were marked for
identification.)

BY MR. ANKER:

Q Now, I show you, Doctor, Exhibit R-23 and I ask you
to identify that document for the record.

A This document is the percentage of students who
attend college or institutions of higher education and the
information is obtained from the Office of the Director of
Guidance and we have this information for three years only,
1963 through 1965 to 1966.

Q Are there -- well, rather than introduce the documents,
perhaps it will be easier for you to read that short summary?

A "We would say that the school session of 1963 to
1964 indicated that 66.3 per cent of our high school graduates
went forth to higher education and in 1964 to 1965 69.2 per
cent and for the school session '65 to '66, 61.2 per cent.
Higher education is defined as education beyond high school."

THE COURT: Did you offer that document?

MR. ANKER: I don't believe so, Your Honor.

THE COURT: Well, you might as well offer it, so

that we will have it before us.

MR. ANKER: Very well.

(Whereupon, Plaintiff's Exhibit
R-24, consisting of seven pages,
was marked for identification.)

BY MR. ANKER:

Q Doctor, with respect to the number of students who go on to college, I would like to ask you whether your high school curriculum is divided in any way as between college preparatory and non-college preparatory?

A As to curriculum, there are four curricula opportunities in high school in this sense: It is divided into college prep, business education, science-technical and general.

Q And who is it who decides into which of these curricula divisions the particular student is placed?

A The pupil elects, the parent approves and Guidance guides and there is generally concurrence among these three. Guidance is with a capital G, you know, Guidance Counsellor.

Q If a student strongly desired to enter college preparatory curriculum but it appeared to the school administration that he was not equipped in respect to intelligence or

achievement or some other basis, would he be precluded from entering college preparatory curriculum?

A The policy is that he take the risk even in the face of negative evidence.

Q So the final test would be whether he could keep up with the others?

A Make it or not make it, yes, sir.

Q Thank you.

Now, Doctor, I show you plaintiff's Exhibit R-24 and I ask you to identify it, please.

A These are the schools and the teachers, enrollment, number of classrooms and the teacher-pupil ratio and the classroom-pupil ratio of the schools for the years -- '60 to '61 through school year '60 to '67.

MR. ANKER: I offer R-24 into evidence, Your Honor.

(Whereupon, Plaintiff's Exhibit R-24 was received into evidence.)

(Whereupon, Plaintiff's Exhibit R-26, R-25 was marked for identification.)

BY MR. ANKER:

Q Doctor, I show you this exhibit R-25 for identification and ask you to identify that, please?

A Counsellor, this is the median family income for

BY MR. ANKER:

Q Doctor, would you identify Exhibit R-27, please?

A This is the summary scale adopted by the City School Board of Alexandria for the 1960 and 1961 school year and a sequential attachment indicating the same data through 1965 to 1966. In other words, a five year salary basis dealing with teachers, their degrees and salaries paid.

Q A teacher is paid dependent upon the degree he has obtained, is that correct?

A That is correct. It is an experience-degree pay scale.

Q And are those the only criteria for dividing teacher pay categories -- in other words, is there any such category as a temporary teacher in your system?

A No, there is not.

MR. ANKER: I offer R-27, if the Court please.

BY MR. ANKER:

Q Are you familiar, or could you tell the Court, whether any of the teachers in your school system are residents of the District of Columbia?

A Yes, there are teachers who work in our system who

Thereupon

CARL HANSEN

resumed the witness stand and testified as follows:

CROSS EXAMINATION

BY MR. REDMON:

Q Dr. Hansen -- we have met before.

A That is right.

Q On direct examination, Dr. Hansen, some mention was made of the budgets which are submitted by the Board of Education to the District Commissioners which are in turn transmitted to the United States Congress. In connection with that, there was also some mention made of the so-called model school budget which was submitted to Congressman Pucinski, I believe at his request and which was drafted by your staff, is that correct, sir?

A That is correct.

Q Now, with respect to what I will refer to as the normal budget which is arranged and organized by your staff and submitted for presentation to Congress, what considerations in terms of the availability of money are considered by you in making that budget up?

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